

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME I.

(Pages 1 to 400 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Records of U. S. Circuit Court
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785

Nos. 2209, 2210 AND 2211.

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Appeals from the District Court of the United States for the
District of Idaho, Central Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, CLARENCE W. ROBNETT, WILLIAM
DWYER, and FRANK W. KETTENBACH,
Appellees.

Transcript of Record.

VOLUME I.

(Pages 1 to 400, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

*In the District Court of the United States Within
and for the District of Idaho, Central Division.*

IN EQUITY—#388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order Extending Time [to December 19, 1912, to
File Record].**

On the application of the Acting Attorney General of the United States, for good cause shown, and it further appearing to the Court that the transcript in this cause is voluminous and cannot be prepared within thirty days from and after the signing of the Citation in said cause,

IT IS THEREFORE ORDERED, that the time for filing said transcript in the Circuit Court of Appeals be and is hereby extended sixty days from and after the 20th day of October, A. D. 1912.

Dated this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: No. 388. In the District Court of the United States, District of Idaho, Central Division. The United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript.

No. 2209. United States Circuit Court of Appeals for the Ninth Circuit. No. 388. In the District

Court of the United States for the District of Idaho. United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript. Filed Oct. 3, 1912. F. D. Monckton, Clerk. Refiled Dec. 19, 1912. F. D. Monckton, Clerk.

**[Order Extending Time to December 26, 1912, to
File Record.]**

*In the District Court of the United States, for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Appellants,

vs.

WILLIAM F. KETTENBACH et al.,

Respondents.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-entitled cause in the U. S. Circuit Court of Appeals be and the same is hereby extended and enlarged from the 19th day of December, 1912, to and including the 26th day of December, 1912.

Dated December 19, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 388. In the District Court of the United States, District of Idaho, Central Division. The United States, Appellant, vs. William F. Kettenbach et al., Respondents. Order Extending Time to

File Transcript. Filed Dec. 23, 1912. F. D. Monckton, Clerk.

No. 2209. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including Dec. 26, 1912, to File Record Thereof and to Docket Case. Filed Dec. 23, 1912. F. D. Monckton, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH.

Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States, for the District of Idaho:

Charles J. Bonaparte, Attorney General of the United States, for and in behalf of the United States of America, complainant, brings this Bill of Complaint against William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, and thereupon complains and says:

FIRST.

That prior to the acts hereinafter complained of,

the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled, "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended to all public land States by the Act of Congress of August 4, 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation, might be sold to citizens of the United States or persons who had declared their [1*] intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre.

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for

*Page number appearing at foot of page of original certified Record.

ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.”

which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated.

And said Act further provides that:

“If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application:

“The person desiring to purchase shall furnish to the register of the land office satisfactory

and other unlawful methods, they might unlawfully and [3] fraudulently procure for themselves and for their use, benefit and pecuniary advantage, large quantities of said public lands.

Said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said Act (and the regulations of the Commissioner of the General Land Office, applicable to said proceeding), under an agreement then and there and theretofore had and entered into between said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and divers of said persons, wherein and whereby they, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, agreed to purchase said lands described in the respective statements and applications of said applicants as soon as said applicants should secure title thereto; and in divers other instances, said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said Act and the regulations of the Commissioner of the General Land Office, applicable to said proceeding, under an agreement then and there and theretofore had and entered into between said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and divers of said persons,

wherein and whereby they, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett agreed to furnish or procure to be furnished and supplied to said applicant the amount of money necessary to pay all expenses in connection with making said filing and procuring title to said land under said Act, including the sum necessary to pay for said land; whereupon said applicant, as soon as he should obtain title to said lands from the United States, was to deed the said lands to said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or either of them, or to some person designated by them or either of them, and the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, were thereupon [4] to pay or procure to be paid to said applicant a sum theretofore, at the making of the agreement aforesaid, decided upon and promised to be paid.

FOURTH.

That pursuant to said unlawful and corrupt conspiracy and agreement, and to carry out and effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did unlawfully, falsely, fraudulently and corruptly induce and procure Carrie D. Maris, William B. Benton, Joel H. Benton, Henderson F. Disney, Harry S. Palmer, George W. Harrington, Robert N. Wright, Maud N. Wright, Van W. Robertson, John W. Kilinger, John E. Nelson, Soren Hansen, John H. Little, Ellsworth M. Harrington,

Wren Pierce, Benjamin F. Bashor, Jas. C. Evans, Pearl Washburn, Lon E. Bishop, Joseph B. Clute, Frederick W. Newman, Francis M. Long, John H. Long, Benjamin F. Long, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Bertsel H. Ferris, George Ray Robinson, Drury M. Gammon, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, George H. Kester, Guy L. Wilson, Frances A. Justice, Fred E. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Walter E. Daggett, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, Edgar H. Dammarell, William E. Helkenbery, William Havernick and Geary Van Ardsdalen and divers other persons not necessary to be named here, to apply at the United States Land Office at Lewiston, Idaho, in the land district where said lands are situated, under the provisions of the Act of Congress aforesaid and pursuant to and for the purpose of carrying out the said unlawful, fraudulent and corrupt conspiracy and agreement aforesaid, and for the purpose of obtaining title to large tracts of the public timber lands of the United States, as aforesaid, did cause, induce and procure the said parties, and each of them, to appear before the register or receiver of the United States Land Office at Lewiston, Idaho, and each to make and subscribe, and make oath to the written statement required by said Act of persons desiring to avail [5] themselves of the provisions thereof, and did cause, induce and pro-

cure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did induce and procure the persons hereinbefore named, and each of them, to appear before the land office of the United States at Lewiston, Idaho, and to answer certain questions hereinbefore in this complaint set out, prescribed by the Commissioner of the General Land Office, pursuant to the authority contained in the Act aforesaid and each of said persons then and there by the procurement of the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did answer said questions in substance and to the effect that he had not sold or trans-

ferred his claim to the land for which he made application to purchase since making his sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entry in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any [6] interest in the entry which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

FIFTH.

That the statements so made by the said Carrie D. Maris, William B. Benton, Joel H. Benton, Henderson F. Dizney, Harry S. Palmer, George W. Harrington, Robert N. Wright, Maud N. Wright, Van W. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Jas. C. Evans, Pearl Washburn, Lon E. Bishop, Joseph B. Clute, Frederick W. Newman, Francis M. Long, John H. Long, Benjamin F. Long, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Bertsel H. Ferris, George Ray Robinson, Drury M. Gammon, Charles W. Taylor, Jackson O'Keefe, Edgar

J. Taylor, Joseph H. Prentice, George H. Kester, Guy L. Wilson, Frances A. Justice, Fred E. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Walter E. Daggett, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, Edgar H. Dammarell, William E. Helkenbery, William Havernick and Geary Van Ardsdalen, and by each of them, were false, fraudulent and untrue, and were known to the said persons and to the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett to be false, fraudulent and untrue and the said statements and each of them were made for the purpose of procuring title from the United States to the lands described in the several sworn statements of the persons hereinbefore named, and which lands are hereafter described, pursuant to the unlawful, false, fraudulent and corrupt conspiracy, combination and agreement hereinbefore referred to.

That in truth and in fact, divers of the said several applicants had been supplied and furnished the money with which to pay for said lands and the fees and expenses incident to obtaining title thereto, by the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or one or more of them, [7] pursuant to the unlawful, fraudulent and corrupt agreement hereinbefore referred to; and the title to said lands was so obtained by each and all of the several persons hereinbefore named as applicants, for the purpose and with the

understanding that the same should be conveyed at the request of the said defendants as soon as title thereto should be obtained from the United States.

SIXTH.

And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by their said unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned and hereinafter to be mentioned in connection with the several descriptions of said lands to be mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands hereinafter to be described, were not procured, as the defendants William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett well knew at the time of procuring the same, in compliance with the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts of land hereinafter in this bill of complaint described, the act and conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and each of them, and each and every of their employees and confederates, were illegal and fraudulent and that the patents procured from this

complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent and void, as against this complainant, and contrary to equity and good conscience, and being so, ought by this court, to be set aside and held for naught, not only in the hands of said defendants, but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants. [8]

SEVENTH.

And complainant avers and charges that the patents so unlawfully and fraudulently procured from complainant by and on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, for the several tracts of land hereinafter in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

EIGHTH.

Complainant further avers and charges that pursuant to such unlawful and corrupt combination, conspiracy and agreement and to effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did induce the said several persons hereinbefore and hereinafter named in connection with the description of the said several tracts of land to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach, otherwise W. F. Kettenbach, in some instances to George H. Kester and William F. Kettenbach, or Geo. H. Kester and W. F. Kettenbach or Kester and

Kettenbach, in some instances to Clarence W. Robnett, otherwise C. W. Robnett in some instances to Kittie E. Dwyer, in other instances to other person or persons unknown to complainant; but complainant avers that in each and every instance such conveyances were executed for the benefit of said defendants William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore set out and referred to.

NINTH.

And complainant here now sets forth and describes the lands so as aforesaid fraudulently procured to be patented by complainant by and on behalf of the said conspirators, together with the name in each instance of the person through and by whom patents to said lands were so fraudulently obtained from complainant, as hereinbefore set out, the number of said patent, the date of application therefor and the date of the issuance thereof: [9]

No. of patent, 4049.

Date of Application, Nov. 21, 1902.

Issued to CARRIE D. MARIS.

Description: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 13, Tp. 36 N., R. 5 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4054.

Date of application, Nov. 21, 1902.

Issued to WILLIAM B. BENTON.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4055.

Date of application, Nov. 21, 1902.

Issued to JOEL H. BENTON.

Description: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4074.

Date of application, Nov. 25, 1902.

Issued to HENDERSON F. DIZNEY.

Description: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, NW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 11, Tp. 40 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4192.

Date of application, Jan. 23, 1903.

Issued to HARRY S. PALMER.

Description: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 33, Tp. 40 N., R. 4 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4213.

Date of application, Feb. 11, 1903.

Issued to GEORGE W. HARRINGTON.

Description: W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, Tp. 36 N., R. 5 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4249.

Date of application, March 11, 1903.

Issued to ROBERT N. WRIGHT.

Description; Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 1, Tp. 33 N., R. 5 E. B. M.

Date of patent, Aug. 3, 1904. [10]

No. of patent, 4251.

Date of application, Mar. 11, 1903.

Issued to MAUD N. WRIGHT.

Description: Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, Tp. 33 N., R. 5 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4352.

Date of application, May 19, 1903.

Issued to VAN W. ROBERTSON.

Description: SW. $\frac{1}{4}$, Sec. 10, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4357.

Date of application, May, 22, 1903.

Issued to JOHN W. KILLINGER.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, Tp. 39 N., R. 2 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4359.

Date of application, May 22, 1903.

Issued to JOHN E. NELSON.

Description: NE. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 2 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4377.

Date of application, June 5, 1903.

Issued to SOREN HANSEN.

Description: SE. $\frac{1}{4}$, Sec. 10, Tp. 39, N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4385.

Date of application, June 15, 1903.

Issued to JOHN H. LITTLE.

Description: Lot 1, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
Sec. 25, Tp. 39 N., R. 3 E., B. M.

Date of patent Aug. 3, 1904.

No. of patent, 4384.

Date of application, June 15, 1903.

Issued to ELLSWORTH M. HARRINGTON.

Description: Lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4389.

Date of application, June 17, 1903.

Issued to WREN PIERCE,

Description: SE. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3 E., B.
M.

Date of patent, Aug. 3, 1904. [11]

No. of patent, 4390.

Date of application, June 17, 1903.

Issued to BENJAMIN F. BASHOR.

Description: Lot 4, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4391.

Date of application, June 17, 1903.

Issued to JAS. C. EVANS.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 25,
Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4306.

Date of application, April 16, 1903.

Issued to PEARL WASHBURN.

Description: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 27, Tp.
40 N., R. 4 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4392.

Date of application, June 17, 1903.

Issued to LON E. BISHOP.

Description: W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, No. 4393.

Date of application, June 17, 1903.

Issued to JOSEPH B. CLUTE.

Description: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4394.

Date of application, June 17, 1903.

Issued to FREDERICK W. NEWMAN.

Description: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 23, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4395.

Date of application, June 17, 1903.

Issued to FRANCIS M. LONG.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904. [12]

No. of patent, 4396.

Date of application, June 17, 1903.

Issued to JOHN H. LONG.

Description: Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4397.

Date of application, June 18, 1903.

Issued to BENJAMIN F. LONG.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 18, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4404.

Date of application, June 23, 1903.

Issued to CHARLES DENT.

Description: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4405.

Date of application, June 23, 1903.

Issued to CHARLES SMITH.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4411.

Date of application, June 26, 1903.

Issued to GEORGE MORRISON.

Description: NE. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4412.

Date of application, June 26, 1903.

Issued to EDWARD M. HYDE.

Description: NW. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4414.

Date of application, June 26, 1903.

Issued to BERTSEL H. FERRIS.

Description: Lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904. [13]

No. of patent, 4415.

Date of application, June 26, 1903.

Issued to GEORGE RAY ROBINSON.

Description: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 26, Tp.
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4477.

Date of application, Aug. 19, 1903.

Issued to DRURY M. GAMMON.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$,
Sec. 25, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 35, Tp. 40 N., R. 3 E.,
B. M.

Date of patent, Sept. 9, 1904.

No. of patent, 4762.

Date of application, July 11, 1904.

Issued to CHAS. W. TAYLOR.

Description: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 30, Tp. 38
N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4764.

Date of application, July 11, 1904.

Issued to JACKSON O'KEEFE.

Description: W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4765.

Date of application, July 11, 1904.

Issued to EDGAR J. TAYLOR.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4766.

Date of application, July 11, 1904.

Issued to JOSEPH H. PRENTICE.

Description: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 18, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4769.

Date of application, July 12, 1904.

Issued to GEORGE H. KESTER.

Description: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [14]

No. of patent, 4770.

Date of application, July 13, 1904.

Issued to GUY L. WILSON.

Description: Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4771.

Date of application, July 13, 1904.

Issued to FRANCES A. JUSTICE.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19, Tp. 38
N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4772.

Date of application, July 13, 1904.

Issued to FRED E. JUSTICE.

Description: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20, Tp.
38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4773.

Date of application, July 13, 1904.

Issued to EDNA P. KESTER.

Description: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, Tp.
38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4774.

Date of application, July 14, 1904.

Issued to ELIZABETH KETTENBACH.

Description: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, Tp.
38 N., R. 5 E., B. M.

No. of patent, 4775.

Date of application, July 14, 1904.

Issued to WILLIAM J. WHITE.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 14, Tp.
38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4776.

Date of application, July 14, 1904.

Issued to ELIZABETH WHITE.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [15]

No. of patent, 4777.

Date of application, July 14, 1904.

Issued to MAMIE P. WHITE.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 14, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4778.

Date of application, July 15, 1904.

Issued to WALTER E. DAGGETT.

Description: Lots 2, 3, 7, 8 and 9, Sec. 5, Tp. 40 N. R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4779.

Date of application, July 15, 1904.

Issued to MARTHA E. HALLETT.

Description: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 19, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4780.

Date of application, July 15, 1904.

Issued to DANIEL W. GREENBURG.

Description: SW. $\frac{1}{4}$, Sec. 17, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4781.

Date of application, July 15, 1904.

Issued to DAVID S. BINGHAM.

Description: SE. $\frac{1}{4}$, Sec. 17, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4784.

Date of application, July 18, 1904.

Issued to WILLIAM McMILLAN.

Description: SE. $\frac{1}{4}$, Sec. 21, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4785.

Date of application, July 18, 1904.

Issued to HATTIE ROWLAND.

Description: SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$

SE. $\frac{1}{4}$, Sec. 15, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [16]

No. of patent, 4799.

Date of application, July 25, 1904.

Issued to EDGAR H. DAMMARELL.

Description: NE. $\frac{1}{4}$, Sec. 19, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 5015.

Date of application, Jan. 20, 1905.

Issued to WILLIAM E. HELKENBERY.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 28, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$,

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29, Tp. 39 N., R. 5 E., B. M.

Date of patent, May 29, 1907.

No. of patent, 4635.

Date of application, Jan. 6, 1904.

Issued to WILLIAM HAVERNICK.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 23, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,

Sec. 26, Tp. 37 N., R. 2 E., B. M.

Date of patent, Nov. 1, 1904.

No. of patent, 4641.

Date of application, Jan. 11, 1904.

Issued to GEARY VANARDSDALEN.

Description: NE. $\frac{1}{4}$, Sec. 25, Tp. 37 N., R. 5 E., B. M.
Date of patent, Nov. 1, 1904.

TENTH.

That complainant is informed and believes and therefore avers that the said defendant, Frank W. Kettenbach, claims some interest in said lands, the exact nature of which is to complainant unknown, but that said claim is without right and that if any interest has been acquired by the said Frank W. Kettenbach in and to any of the lands herein mentioned, the same was acquired with a knowledge that the title to said lands was fraudulently obtained from the United States. [17]

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its valuable lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and relievable; and to the end that the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach may full, true, direct and certain answers make, according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to

have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named; and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, and as such, be held for naught and set aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay into the treasury of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

[18]

May it please your Honors to grant unto the complainant, a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises and further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience, and your

complainant will ever pray.

CHARLES J. BONAPARTE,
Attorney General of the United States,
N. M. RUICK,
United States Attorney, District of Idaho,
MILES S. JOHNSON,
Assistant United States Attorney, District of Idaho,
Solicitors for Complainant.

[Endorsed]: Bill of Complaint. No. 388. Filed
Oct. 14, 1907. A. L. Richardson, Clerk. N. M.
Ruick, U. S. Atty., Boise, Idaho. [19]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

IN EQUITY —No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, WILLIAM DWYER, CLARENCE W.
ROBNETT and FRANK W. KETTEN-
BACH,

Defendants.

Subpoena ad Respondendum.

The President of the United States of America, to
William F. Kettenbach, George H. Kester,
William Dwyer, Clarence W. Robnett and
Frank W. Kettenbach, Greeting:

You and each of you are hereby commanded that
you be and appear in said Circuit Court of the

United States, at the courtroom thereof, in Moscow, in said District, on the first Monday of December next, which will be the second day of December, A. D. 1907, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said court, wherein The United States of America is complainant and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you, the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court [20] of the United States, and the seal of our said Circuit Court affixed at Boise in said District, this 18 day of October, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-second.

[Seal]

A. L. RICHARDSON,

Clerk.

I hereby certify that I received the within Subpoena Ad Respondendum at Lewiston, Idaho, on the 24th day of October, 1907, and that I served the same upon William F. Kettenbach, Clarence W. Robnett and William Dwyer on the 25th day of October, 1907, and upon F. W. Kettenbach on the 26th

day of October, 1907, the defendants named therein, at Lewiston, Nez Perce Co., Idaho, by handing to and leaving with each of them personally, a certified copy of the Subpoena Ad Respondendum, together with a certified copy of the complaint. I further certify that after due and diligent search made George H. Kester, another defendant named therein could not be found within the District of Idaho.

R. ROUNDS,

U. S. Marshal.

By Louis D. Schattner,

Deputy.

Dated at Lewiston, Idaho, this 5th day of December, 1907.

[Endorsed]: Filed Dec. 7, 1907. A. L. Richardson, Clerk. [21]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE W. ROBBETT, and FRANK W. KETTENBACH.

Demurrer to Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Come now William F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence W. Robnett, and demur

to the Bill in Equity on file herein and for cause of demurrer allege:

1.

That said bill does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

2.

That there is a misjoinder of parties defendant in said bill and such misjoinder consists in this to wit:

That the said William F. Kettenbach, Geo. H. Kester and William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach, no concert of action appearing from the bill and no allegations wherein the said parties can be made jointly liable for any act or violation of law or the rules of equity in any way or manner or at all. [22]

3.

That said bill is ambiguous, unintelligible, indefinite and uncertain, and that such uncertainty consists in this to wit:

It does not appear therefrom whether said land or any part thereof was ever transferred to these demurring defendants or either thereof, or that the same or any part thereof has ever been transferred by the original entrymen to these demurring defendants or to any other person.

4.

That said bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and that said bill does

not state facts sufficient to show that the above-entitled court has jurisdiction over any of the subject matter contained, or pleaded therein.

5.

That said bill as a whole does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

WHEREFORE, William F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence W. Robnett, demand judgment on demurrer.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach, Geo. H. Kester, William Dwyer, and Clarence W. Robnett, Residing at Boise, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says, that he is one of the solicitors for the demurring defendants above named, and that said demurrer is made [23] in good faith, and not for the purpose of delay and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29 day of November, A. D. 1907.

JOHN B. ANDERSON,

Notary Public in and for Nez Perce County, State of Idaho.

Service of foregoing demurrer accepted by receipt of copy admitted this 29 day of Nov., 1907.

MILES S. JOHNSON,

Assistant U. S. District Attorney and Solicitor for Complainant.

[Endorsed]: Demurrer to Bill in Equity. No. 388. Filed Dec. 2d, 1907. A. L. Richardson, Clerk.
[24]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE W. ROBBETT, and FRANK W. KETTENBACH,
Defendants.

Amended Demurrer to Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho, Northern Division.

Come now William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by leave of Court first had and obtained, and file this their amended demurrer to the Bill in Equity on file herein, and for cause of Demurrer allege:

1.

That said bill does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

2.

That there is a misjoinder of parties defendant in said bill, and such misjoinder consists in this: That said William F. Kettenbach, Geo. H. Kester and

William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach, no concert of action appearing from the bill and no allegations wherein the said parties can be made jointly liable for any act or violation of law; and it does not appear from said bill that the said defendants were [25] to share jointly or at all in the proceeds of said land or the money received therefrom, or contributed jointly toward the procuring of said parcels or either thereof; and it does not appear from said bill that the said defendants are jointly liable for any act or violation of law or the rules of equity in any way or manner whatsoever.

3.

That said bill is ambiguous, unintelligible, indefinite and uncertain, and that such uncertainty consists in this, to wit:

It does not appear therefrom whether said land or any part thereof was ever transferred to these demurring defendants or either thereof, or that the same or any part thereof has ever been transferred by the original entrymen to these demurring defendants or to any other person or persons, and it does not appear therefrom that the said defendants, or either thereof, are the present owners of said land or any part thereof.

4.

That said bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and that the said bill does not state facts sufficient to show that the above-

entitled court has jurisdiction over any of the subject matter contained or pleaded therein, or jurisdiction to hear and determine the same.

5.

That said bill is further indefinite and uncertain, and that such uncertainty consists in this to wit:

That it does not appear therefrom, in what way or manner the said defendants acted or what overt acts [26] were committed by either of said defendants in procuring title to said tracts of land or any part thereof, or the manner in which the said land was acquired.

6.

That said bill as a whole does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

WHEREFORE, William F. Kettenbach, Geo. H. Kester and William Dwyer, and Clarence W. Robnett, demand judgment on their Amended Demurrer.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,
Geo. H. Kester, William Dwyer and Clarence
W. Robnett, Residing at Lewiston, Idaho.

State of Idaho,
County of Latah,—ss.

Geo. W. Tannahill, being duly sworn upon oath says, that he is the solicitor for the demurring defendants above named, and that said demurrer is made in good faith and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 20th day of May, A. D. 1908.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Amended Demurrer to Bill in Equity.
No. 388. Filed May 20, 1908. A. L. Richardson,
Clerk. [27]

*In the Circuit Court of the United States, Ninth Cir-
cuit, District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE W. ROB-
NETT, and FRANK W. KETTENBACH,
Defendants.

Amended Motion to Strike.

Come now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by leave of Court first had and obtained, and file this their Amended Motion to Strike Out of and from the plaintiff's Bill in Equity on file herein, the following portions:

1.

All of paragraph one, and especially all that portion of paragraph one, beginning with the word "said," the same being the first word in line three from the bottom of page 2, and ending with the word "office," the same being the last word in said paragraph one.

Upon the ground and for the reason that the same is redundant, surplusage, irrelevant and immaterial.

2.

Strike out all of the 2d paragraph of said Bill in Equity.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

3.

Strike out all of that portion of paragraph 3, [28] beginning with the word "and," the same being next to the last word in line 6 from the top of page 4, and ending with the word "agreement," the same being the 7th word in line 8 from the top of page 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

4.

Strike out all of that portion of paragraph 3 beginning with the word "then," the same being the 8th word in line 8 from the top of page 4 and ending with the word "thereto," the same being the 6th word in the 15th line from the top of page 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

5.

Strike out all that portion of paragraph 3, beginning with the word "and," the same being the 7th word in line 15 from the top of page 4 and ending with the word "paid," the same being the last word in said paragraph 3.

Upon the ground that the same is redundant, sur-

plusage, irrelevant and immaterial.

6.

Strike out all of paragraph 4 of said bill, upon the ground that the same is surplusage, redundant, irrelevant and immaterial

7.

Strike out all that portion of paragraph 4, beginning with the word "did," the same being the 9th word in line 5 from the top of page 6, and ending with the word "office," the same being the last word in line 14, from the top of page 6.

And also that portion of paragraph 4, beginning [29] with the word "that," the same being the first word in line 15 from the top of page 6, and ending with the word "money," the same being the last word in paragraph 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

8.

Strike out all of paragraph 5 of said Bill in Equity, and also all that portion of paragraph 5, beginning with the word "that," the same being the first word in line 5 from the bottom of page 7 and ending with the word "states," the same being the last word in paragraph 5.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

9.

Strike out all of paragraph 6, and all of that portion of paragraph 6, beginning with the word "but," the same being the 7th word in line 2 from the bottom of page 8 and ending with the word "defendants,"

the same being the last word in the last line of page 8.

Upon the ground that the same is surplusage, redundant, irrelevant and immaterial.

10.

Strike out all of paragraph 8 upon the ground that the same is surplusage, redundant, irrelevant and immaterial.

11.

Strike out all of paragraph 9, except that portion thereof beginning with the word "no," the same being the first word in line 6 from the bottom of page 14 and ending with the figures "1904," the same being the last word or figures in the last line on page 14.
[30]

Upon the ground that the same is surplusage, redundant, irrelevant and immaterial, and if material for any purpose are matters of evidence.

Upon the argument of said motion, there will be used the Bill in Equity heretofore filed herein, the defendants' original notice of motion heretofore served and filed herein and all of the files and records in the cause.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,
Geo. H. Kester, William Dwyer, and Clarence
W. Robnett, Residing at Lewiston, Idaho.

State of Idaho,
County of Latah,—ss.

Geo. W. Tannahill, being duly sworn upon oath says, that he is the solicitor for the defendants in the foregoing notice of motion, and that said motion is

made in good faith and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 19th day of May, A. D. 1908.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Amended Motion to Strike. No. 388. Filed May 20, 1908. A. L. Richardson, Clerk.
[31]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH,
Defendants.

Opinion on Amended Demurrer and Amended Motion.

CHARLES J. BONAPARTE, N. M. RUICK,
and MILES S. JOHNSON, Solicitors for
Complainant.

GEORGE W. TANNAHILL, Solicitor for Defendants.

DIETRICH, District Judge:

The amended demurrer and amended motion of the defendants were submitted at the spring term, with leave to both parties to file written argument within thirty days.

The demurrer should be sustained upon the third ground. The purpose of the bill is to set aside the patents and re-invest the United States with title to numerous tracts of timber land. Complainant alleges a conspiracy between the defendants to induce various persons to enter and acquire patents to several tracts of land. [32] The purpose of the conspiracy was consummated and patents were issued to a large number of entrymen. It is alleged that some of the titles thus procured from the Government were conveyed to the defendants severally or jointly. It is also alleged that the patents, having been wrongfully procured from the United States, "ought by this court to be set aside and held for naught, not only in the hands of said defendants but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants." It is also expressly alleged that in some instances the titles thus acquired by the entrymen were conveyed to defendants, and "to Kitty E. Dwyer, in other instances to other person or persons unknown to complainant." Kitty E. Dwyer is not made a defendant, and not only is there a failure to allege what particular lands were conveyed to any of the defendants, but the bill is wholly silent as to present ownership of all of the lands. All persons claiming an interest in the land should be made parties, and

it follows that it should clearly appear that the defendants are the present owners.

The bill was filed before the rendition by the Supreme Court of the United States of the decision in the case of United States vs. Williamson, and it is not improbable that the complainant will desire to reform the bill by eliminating certain portions thereof. Moreover, at the oral argument it was suggested by counsel for the Government that it was not thought that the defendant Frank W. Kettenbach is a proper party defendant, and that it was desired to amend by substituting the name of some corporation in his place. The other grounds of the demurrer will therefore be overruled without prejudice to a consideration of the same objections, if [33] they should be interposed to an amended bill.

The motion to strike out certain portions of the bill will be denied. Even if it be assumed that such motion is proper, it is unnecessary to consider it at this time, in view of the ruling upon the demurrer.

Dated November 7th, 1908.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Opinion on Amended Demurrer and Amended Motion. No. 388. Filed November 7th, 1908. A. L. Richardson, Clerk. [34]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 388—Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER, WILLIAM DWYER, CLARENCE W. ROBBETT and FRANK W. KETTENBACH,

Defendants.

Order [Sustaining Demurrer to Complaint on Third Ground and Denying Motion to Strike, etc.].

On this day was announced the decision of the Court upon the amended demurrer to the complaint herein and upon the amended motion to strike out part of the complaint in said cause heretofore argued and submitted, and it is ordered that said demurrer be and is hereby sustained upon the third ground therein stated and overruled upon the other grounds without prejudice to a consideration of the same objections, if they should be interposed to an amended bill, and ordered that the said motion to strike out portions of the said bill of complaint be, and the same is hereby, denied.

Dated November 7, 1908. [35]

*In the Circuit Court of the United States, for the
Ninth Judicial Circuit, District of Idaho, North-
ern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBNETT, and FRANK W.
KETTENBACH,

Defendants.

Notice of Motion to Dismiss Action.

To the Plaintiff Above Named, and to C. H. Lingen-
felter, United States District Attorney for the
District of Idaho, and by Virtue Thereof, At-
torney for Complainant, and to Each of You:

TAKE NOTICE: That at the courtroom of the
above-entitled court, in the city of Moscow, Latah
County, State of Idaho, within and for the District
of Idaho, Northern Division, on the first day of the
convening of the May term of the above-entitled
court, to wit, on the 10th day of May, A. D. 1909, at
the hour of ten o'clock A. M. of said day, or as soon
thereafter as counsel can be heard, and in case said
court is continued to a later date, then on the first
day of the convening of said Court at the place afore-
said, at the hour of ten o'clock A. M. of said day,
the defendants herein, William F. Kettenbach,
George H. Kester, William Dwyer, and Clarence W.
Robnett will move the above-entitled court to dismiss

this action upon the following grounds, and for the following reasons:

1.

Failure to prosecute the action with diligence, or at all.

2.

That the petition in said action was filed in the [36] above-entitled court on the 19th day of October, A. D. 1907, and has remained on file therein since said time; that the defendants herein, thereafter, and within the time allowed by law, filed their amended demurrer and motion to strike certain portions of said bill in equity, which is now on file in the above-entitled court in said cause.

3.

That thereafter, the said cause was argued and submitted to the Court, at Moscow at the May, 1908, term thereof; and thereafter on Nov. 7th, 1908, the above-entitled Court rendered its decision thereon sustaining said amended demurrer, granting the complainant the privilege of filing an amended bill.

4.

That on Nov. 7, 1908, the above-entitled court made and entered its order sustaining said demurrer and granting to the complainant the privilege of filing an amended bill, but that no amended bill of any kind or nature has ever been served or filed; and the action has never been prosecuted with diligence as required by law, and the rules of the above-entitled court.

This motion is made and based upon the minutes of the Court, the certificate of the Clerk attached

hereto, and the files and records in the above-entitled cause.

GEO. W. TANNAHILL,
Solicitor for Defendants, Wm. F. Kettenbach, Geo.
H. Kester, Wm. Dwyer and Clarence W. Rob-
nett, Residing at Lewiston, Idaho.

[Endorsed]: Notice of Motion to Dismiss Action—
No. 388. Filed April 23, 1909. A. L. Richardson,
Clerk. [37]

**[Certificate That No Amended Bill or Other
Pleading was Filed.]**

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBNETT, and FRANK W.
KETTENBACH,
Defendants.

CERTIFICATE OF CLERK.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the above-entitled
court, do hereby certify that on Nov. 7, A. D. 1908,
an order was made by the above-entitled court sus-
taining the amended demurrer to the bill in the above-
entitled cause, and that no amended bill or other
pleading has been filed by the complainant in said
cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the above-entitled court this 23d day of April, A. D. 1909.

A. L. RICHARDSON,
Clerk of the United States Court. [38]

*In the Circuit Court of the United States, for the
Ninth Judicial Circuit, District of Idaho, North-
ern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBNETT, and FRANK W.
KETTENBACH.

Motion [to Dismiss Action].

Comes now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer, and Clarence W. Robnett, pursuant to the foregoing motion, and moves the above-entitled court to dismiss this action upon the ground and for the following reasons severally stated in the foregoing notice of motion.

This motion is made and based upon the foregoing notice of motion, the certificate of clerk attached thereto, minutes of the Court, and all the files and

records in the action.

GEO. W. TANNAHILL,
Solicitor for Defendants, Wm. F. Kettenbach, Geo.
H. Kester, Wm. Dwyer, and Clarence W. Rob-
nett, Residing at Lewiston, Idaho. [39]

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath
says that he is the solicitor for the defendants named
in the foregoing Notice of Motion and Motion; and
that the said motion is made in good faith and not
for the purpose of delay, and is as affiant verily be-
lieves well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 20th day of
April, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: No. 388. Filed April 23, 1909. A.
L. Richardson, Clerk. [40]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 388—Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Denying Motion to Dismiss and Allowing
Application for Leave to File Amended Bill,
etc.].**

It is hereby ordered that the defendants' motion to dismiss this cause heretofore submitted be, and the same is hereby denied and the plaintiff's application for leave to file an amended bill of complaint herein is allowed, and the said plaintiff is given until the 25th inst. to file and serve its amended bill of complaint and the defendants are given thirty days thereafter in which to demur to said bill of complaint, or until July 1, 1909, to answer the same.

Dated May 12, 1909. [41]

[Amended Bill in Equity.]

*In the Circuit Court of the United States, for the
District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE ROBNETT, FRANK W. KETTEN-
BACH,

Defendants.

BILL IN EQUITY.

To the Honorable, the Judges of the Circuit Court
of the United States for the District of Idaho:

The United States of America, the complainant in

the above-entitled cause, by George W. Wickersham, the Attorney General of the United States of America, by leave of the Court in that behalf had and obtained, files this, the said complainant's amended bill of complaint, in the said cause as follows:

The said complainant respectfully represents to this Court:

I. That prior to the acts hereinafter complained of, the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled, "An Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended [42] to all public land States by the Act of Congress of August 4, 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation might be sold to citizens of the United States or persons who had declared their intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre;

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this Act shall file with the register of the proper district a written statement in duplicate, one of which is to be trans-

mitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; containing no mining or other improvements, except for ditch or canal purposes where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this Act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part to the benefit of any person except himself."

which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the Land Office within the district where the land was situated;

And said Act further provides that:

"If any person taking such oath shall swear [43] falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he

may have made, except in the hands of bona fide purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application:

“The person desiring to purchase shall furnish to the register of the land office satisfactory evidence . . . that the land is of the character contemplated in this Act unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, . . . the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon.”

Said Act further provided that effect should be given to its provisions by regulations to be prescribed by the Commissioner of the General Land Office.

II. That pursuant to the authority given by said Act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said Act, among other, the following:

That after the expiration of the 60 days’ publication, the person desiring to purchase the land described in his application to purchase should under oath, make answer to certain questions as follows:

“Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States, may inure, in whole or in part to the benefit of any person except yourself?”

And [44]

“Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?”

And

“Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?”

Also the following:

“Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?”

And

“Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?”

III. That heretofore, to wit, on the first day of July, in the year 1902, and at divers other times before and after that day, and before the making of the several entries hereinafter mentioned and des-

ignated, in the State of Idaho, William F. Kettenbach, George H. Kester, William Dwyer, Clarence Robnett, and Frank W. Kettenbach, hereinbefore and in the caption of this bill named as defendants and heretofore, by the original bill filed in this cause and by process duly issued and served therein, made parties defendant, did unlawfully and corruptly combine, conspire, confederate and agree together, and with each other and with divers other persons, some of whom are hereinafter named and others of whom are to the complainant unknown, and did form, make and enter into an unlawful, corrupt and fraudulent conspiracy, combination and agreement with each other and with the other persons aforesaid, for the purpose and to the end of defrauding the complainant of the title and ownership of divers large tracts of public land then owned by the complainant and lying in the district [45] of public lands subject to entry at the land office of the United States located at Lewiston in the State of Idaho, and for the purpose and to the end of defrauding the complainant out of the use, occupation and possession of the said tracts of public land, and for the purpose and to the end of acquiring by and for the said defendants, and by and for each of them, the title to larger areas of such public lands than could be, under and in accordance with the laws of the United States providing for and regulating the disposal of such public lands, lawfully acquired by the said defendants, collectively or individually, and for the purpose of accomplishing the said ends and of so defrauding the said complainant by divers fraudulent and unlawful means, that

is to say, by means of false, fraudulent and unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, and by means of perjury, the subornation of perjury, the procurement of false swearing, and by means of other falsehoods, false pretenses and misrepresentations, whereby the officers of the United States should be deceived and imposed upon and should be induced and procured to divest the United States of its title to the said lands and to convey the said title of the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States and for the benefit, advantage and profit of the said defendants.

IV. That as a part of the said conspiracy and agreement so far as aforesaid made and entered into by the said defendants, and as a part of the said unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the [46] said defendants, should persuade, employ and otherwise induce and procure a large number of other persons severally to purchase and to make entries of divers tracts of the public lands aforesaid under and in pretended and apparent accordance with the aforesaid Act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892; that before the said other persons should apply to enter and purchase such lands or should take any steps or initiate any proceedings to that end, and before the making of such entries and purchases, and as a means

of persuading and inducing the said other persons to make such entries and purchases, the said defendants should make and enter into certain agreements, contracts and understandings with the said other persons, severally, whereby and by the terms of which agreements, contracts and understandings, the said defendants or some of them, should agree and contract to buy of the said other persons, severally and the said other persons, severally should agree and contract to sell to the said defendants, or to some of them, the respective tracts so to be entered and purchased by the said other persons when and so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered and purchased, or shortly thereafter; that, thereupon and after the making of such unlawful contracts and agreements and while the same should subsist and continue, the said defendants should cause and procure the said other persons severally to apply at the land office aforesaid to make entries of and to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, and should cause and procure each of the said persons so applying, at the time of making his application to enter, and in connection with and as a part of such application, to execute, sign, make [47] oaths to and file in the said land office a sworn statement of the character, substance, tenor and purport prescribed by the said Act of Congress approved on June 3, 1878, which Act is hereinbefore mentioned, stated and in part recited, in which statement such applicant should declare and on his oath

represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing and contemplating that each of the said other persons so to be induced to make such applications and to file such sworn statements should in doing so commit and be guilty of wilful and corrupt perjury and should swear falsely and corruptly and should defraud the United States and fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make such applications should, before the making of his said application and the filing of his said sworn statement, as the said defendants intended and contemplated, have made with the said defendants or some of them the agreement and contract aforesaid by the terms of which such person so to make application agreed to sell to the defendants or to some of them, and the defendants or some of them agreed to buy, the land and the title which such person should acquire from the United States by means of the application and entry by him to be made. [48]

V. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants, and as a further part of the unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the time and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should cause and procure the said other persons, hereinbefore mentioned and such who were as aforesaid to be induced to apply to enter and purchase the tracts of public lands aforesaid, to make such publication and advertisement as are prescribed by the statute hereinbefore mentioned and in part recited, and after such publication and after the period of sixty days by the said statute prescribed, to appear before the proper officer or officers of the said land office and to make such proof before the said officers as is prescribed by the said statute, and then and there to answer on oath and in writing the interrogatories which were as aforesaid prescribed by the commissioner of the general land office to be propounded to all persons seeking to make entries of public lands under the statute hereinbefore mentioned; and it was intended, designed and contemplated by the said defendants that each of the said other persons so appearing and answering should, in answer to the said interrogatories when the same should be propounded to him, on his oath declare, represent and swear, among other things, that he had not, since the making of the sworn statement previously as aforesaid made and filed by him in

applying to make entry, sold or transferred his claim to the land sought by him to be entered; and that he, the said applicant, had not, at the time of his appearing and answering the said interrogatories, directly or indirectly made any contract or agreement or contract in any way or manner, with any person whomsoever, by which the title [49] sought by such applicant to be acquired might inure, in whole or in part, to the benefit of any person except himself; and that he, the said applicant, was at the time last aforesaid making his intended entry in good faith for the appropriation of the land exclusively to his own use and not for the use and benefit of any other person; and that no other person than himself, the said applicant, and that no firm, corporation or association, had, at the time last aforesaid, any interest in the said entry or in the land sought to be entered or in the timber upon the said land; the said defendants intending, designing and contemplating that each of the said other persons so to be caused and procured to answer the said interrogatories in the manner and to the effect last stated should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly, and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make the proofs and to answer the interrogatories aforesaid in the manner and to the

effect aforesaid should, as the said defendants intended and contemplated, before the making of such proofs and answers, have made and entered into the contracts and agreements hereinbefore stated which contracts were to be, at the time last aforesaid still continuing and subsisting, by which the title to be by him acquired should inure to the benefit of the said defendants or of some of them, and by which the said defendants or some of them should have an interest in the land and the title so to be acquired, and by reason of which contract and agreement such person seeking to make entry did not [50] do so in good faith to appropriate such land to his own exclusive use and benefit, but for the use and benefit of the said defendants or some of them.

VI. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants, and as a further part of the unlawful means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid, by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, after having procured the other persons hereinbefore mentioned to make applications to enter the lands hereinbefore mentioned in the manner and under the circumstances aforesaid should furnish and advance to each of the said persons so much money as should be necessary to enable such person to pay to the proper officers of the United States the amount of money prescribed by law to be paid upon the making of the entry by such person to be made, and that the sum so by the

defendants advanced should be deducted from the amount agreed to be paid by them to such person as the purchase price of the land by him entered; and it was further intended and contemplated by the said defendants that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories hereinbefore mentioned and set out, to declare on oath in answer to said interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made; and that he expected [51] to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and

procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered, and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, and should not pay or intend or expect to pay the expenses of his filing and entry out of such funds or money, and should, moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.

VII. That thereafter, that is to say, after the formation and making of the said unlawful conspiracy and agreement so as aforesaid made and entered into by the [52] said defendants, and at divers times in the State of Idaho, in pursuance and execution of the said conspiracy and for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make and enter into fraudulent, corrupt and unlawful contracts, agreements, arrangements and understandings with a large number of persons, severally, that is to say, with Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsell H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, severally, and with

divers other persons who are to the complainant now unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to this bill by proper amendment, and to seek appropriate relief in respect of the lands by them fraudulently obtained from the complainant; that, in and by the said unlawful contracts, agreements, arrangements and understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed and arranged with the said defendants or with some of them that he or she would make an entry and purchase a tract of the public land of the United States under and in pretended and apparent accordance with the aforesaid Act of Congress approved on June 3, 1878, as amended on August 4, 1892, and would, upon obtaining title to the said tract from the United States convey the said title and tract to the defendants or to some of them; and the said defendants, or some of them, acting for all, agreed, contracted and arranged that they would pay to each of the said other persons a certain sum of money for the tract of land by him or [53] her so to be entered and by way of recompense to such person for his or her costs, labor and trouble incurred in acquiring title to the said tract from the United States; and the said defendants further agreed and promised to furnish and advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land and to defray the other expenses incident to the obtaining of title to such land from the United States.

VIII. That thereupon, that is to say, after the making by the said defendants as aforesaid of the unlawful, corrupt and fraudulent agreements, contracts, arrangements and understandings with the said Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, named in the last paragraph hereof, the said defendants, in pursuance and execution of the aforesaid unlawful and fraudulent conspiracy, and to effect the aforesaid unlawful purposes thereof, and in accordance with and in pursuance of the mode, scheme, method and means hereinbefore set out and stated to have been by them mutually agreed upon, designed and contemplated, and in pursuance of and in accordance with the said unlawful, corrupt and fraudulent agreement, stated in the last preceding paragraph hereof to have been made and entered into by and between the said defendants and the said Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, [54] George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long, named in the said last paragraph, did, at divers times, unlawfully, corruptly and fraudulently cause, induce and procure the said Carrie D. Maris, John H. Lit-

tle, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, severally, to apply at the said land office of the United States located at Lewiston in the State of Idaho to purchase a tract of public land, then the property of the complainant, under the provisions of the aforesaid Act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892, and in pretended and apparent accordance with the provisions and requirements of the said Acts, the said defendants then and at all times thereafter well knowing that the said applications so made by the said other persons, and the entries so by the said other persons sought and intended to be made, were and would be false, fraudulent, illegal and invalid by reason of the fact, hereinbefore stated, that each of the said applications was made and each of the said entries was sought and intended to be made in accordance with and in pursuance of an unlawful, corrupt and fraudulent agreement, therefore as aforesaid made and then and thereafter subsisting, whereby the person so applying and seeking to enter each tract had agreed to sell to the [55] said defendants such tract upon the acquisition by him from the United States of title thereto and the said defendants had agreed to buy the said tract and the said title.

And the said defendants, in further pursuance of

the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of, and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, and in further pursuance of and further in accordance with the unlawful, corrupt and fraudulent agreements theretofore as aforesaid made by them with the said Carrie B. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, hereinbefore named, did also, at divers times, cause, induce and procure the said Carrie B. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, and each of them, severally to appear before the officers of the aforesaid land office and each of them in connection with and as a part of his or her application to purchase a tract sought to be by him or her entered, to make, subscribe, make oath to and file in the said land office, a written statement of the character, substance, tenor and purport prescribed by the aforesaid statute to be filed [56] by persons desiring to avail themselves of the provisions thereof, and

did cause, induce and procure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

And the said defendants, in further pursuance of the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, did also at divers times furnish and advance to divers and several of the said other persons hereinbefore named, and stated to have been induced and procured by the said defendants to make unlawful and fraudulent entries of public lands, divers and considerable sums of money for the purpose of enabling such other persons to purchase and pay for the lands by them respectively sought to be entered, and upon the agreement and with the understanding made and had with each of such persons

that the money so furnished was by way of advancement upon the purchase price theretofore agreed to be paid to such person by the said defendants for the land to be entered and acquired by such person and was to be applied by such person to the purchase of, and the payment for the tract [57] by him to be entered, the said defendants then and at all times hereafter, designing, intending and expecting that each of the said persons so receiving such sums of money should and would, when he or she should be questioned upon the subject by the officers of the aforesaid land office, deny and conceal from the said officers the fact that he or she had received such money from the said defendants, and should and would, in answer to the interrogatories to be propounded by the said officers, falsely and fraudulently state, on his or her oath, in writing, that he or she had obtained the said money from other persons or by other means, for the purpose and to the end that the said officers and the other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might and should thereby be deceived, imposed upon and fraudulently misled, and so prevented from further inquiry, investigation and consideration concerning such entries, whereby the truth and the facts hereinbefore stated might be discovered and the fraudulent character of the several transactions disclosed, and that the said officers might and should thereby be fraudulently and mistakenly caused to believe that such entries were lawful and honest and so to be induced to approve the

said entries and to cause patents to be issued thereon, conveying to the several said persons the tracts by them respectively entered.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof the said defendants did induce and procure the said other persons hereinbefore named, and each of them, to appear before the officers [58] of the said land office of the United States at Lewiston, Idaho, and to answer the certain interrogatories hereinbefore in this complaint set out, prescribed by the commissioner of the General Land Office, pursuant to the authority contained in the Act aforesaid and each of said persons then and there by the procurement of the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence Robnett did answer said questions in substance and to the effect that he had not sold or transferred his claim to the land for which he made application to purchase since making his sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entries in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any interest in the entry

which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

IX. That at the divers and several times hereinbefore referred to, the said Carrie D. Maris and the other persons hereinbefore named and stated to have made and entered into certain unlawful, corrupt and illegal agreements, arrangements and understandings with the said defendants, severally did apply to enter, and did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office and each of the said persons did consequently and in the usual course of [59] administration of the public laws obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, that is to say, that the said Carrie D. Maris did on the 15th day of July, 1902, make her application to enter, and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did obtain a patent conveying to her, the southeast quarter of the southwest quarter of section twelve, and the east half of the northwest quarter and the northeast quarter of the southwest quarter of section thirteen, in Township thirty-six north of range five east of the Boise meridian; and the said

John H. Little did on the 20th day of March, 1903, make application to enter and did on the 15th day

of June, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot one and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section twenty-five, in township thirty-nine north of range three east of Boise meridian; and the said

Ellsworth M. Harrington did on the 20th day of March, 1903, make application to enter and did on June 15, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot one, and the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section twenty-four, in Township thirty-nine north of range three east, Boise meridian; and the said

Wren Pierce did on the 21st day of March, 1903, make application to enter and did on June 17, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the southeast quarter of section twenty-two, in township thirty-nine north of range three east of Boise meridian; and the said
[60]

Benjamin F. Bashor did on the 21st day of March, 1903, make application to enter and did on June 17, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot four and the southwest quarter of the southeast quarter and the south half of the southwest quarter of section twenty-four, in township thirty-nine north of range three east of Boise meridian; and the said

Joseph B. Clute did on the 24th day of March, 1903, make application to enter and did on June 17, 1903,

make entry of, and on August 3, 1904, obtained a patent conveying to him, the south half of the northeast quarter, and east half of the southeast quarter of section twenty-six, in township thirty-nine north of range three east, of Boise meridian; and the said

Francis M. Long did on March 26th, 1903, make application to enter and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the north half of the southwest quarter, and north half of the southeast quarter, of section thirteen, in township thirty-nine north, of range three east, of Boise meridian; and the said

John H. Long did on March 26, 1903, make application to enter, and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot two and the southwest quarter of the northeast quarter, and the south half of the northwest quarter, of section twenty-four in township thirty-nine north, of range three east, Boise meridian; and the said

Benjamin F. Long did on March 26, 1903, make application to enter and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, [61] the south half of the northwest quarter and the south half of the northeast quarter, of section eighteen in township thirty-nine north of range three east of Boise meridian; and the said

Benjamin F. Long did on March 26, 1903, make application to enter, and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him the south half of the northwest

quarter and the south half of the northeast quarter, in section thirteen, in township thirty-nine north of range three east of Boise meridian; and the said

Bertsel H. Ferris did on March 31, 1903, make application to enter, and did on June 26, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot three and the northwest quarter of the southeast quarter, and the north half of the southwest quarter, of section twenty-four, in township thirty-nine north of range three east of Boise meridian; and the said

George Ray Robinson did on March 31, 1903, make application to enter and did on June 26, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the north half of the northwest quarter and the north half of the northeast quarter of section twenty-six, in township thirty-nine north of range three east of Boise meridian; and the said

Charles W. Taylor did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots one and two and the east half of the northwest quarter of section thirty in township thirty-eight north of range six east of Boise meridian; and the said

Jackson O'Keefe did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to [62] him, the west half of the southeast quarter and the east half of the southwest quarter of section twenty-three, in township thirty-

eight north of range five east of Boise meridian; and the said

Edgar J. Taylor did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots three and four and the east half of the southwest quarter of section eighteen, in township thirty-eight north of range six east of Boise meridian; and the said

Joseph H. Prentice did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots one and two and the east half of the northwest quarter of section eighteen, in township thirty-eight north of range six east of Boise meridian; and the said

Fred E. Justice did on April 25, 1904, make application to enter and did on July 13, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, the east half of the northeast quarter and the east half of the southeast quarter of section twenty, in township thirty-eight north of range six east of Boise meridian; and the said

Edgar H. Dammarell did on April 25, 1904, make application to enter and did on July 25, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, the northeast quarter of section nineteen, in township thirty-eight north of range six east of Boise meridian; and the said

Edgar H. Dammarell did on April 25, 1904, make application to enter and did on July 25, 1904, make

entry of, and on December 31, 1904, obtained a patent conveying to him, the northeast quarter of section ten, [63] in township thirty-eight north of range six east of Boise meridian.

X. That each of the said persons so making entry of and obtaining title to the tract by him or her entered did apply to make and did make such entry, and did prosecute and carry on the proceedings, at the solicitation and instigation of the said defendants, being moved and stimulated thereto by, the advice, request and promises of the said defendants, and therein acting upon, in pursuance of, and in accordance with the unlawful, corrupt and fraudulent agreement, arrangement and understanding theretofore made and entered into as aforesaid between him or her and the said defendants, which said agreement, arrangement and understanding continued and subsisted throughout the whole of the said proceedings, whereby it had been and was agreed that the said defendants should buy from each of the said persons, and each of the said persons should sell and convey to the said defendants, the tract and the title by him or her to be acquired from the United States.

XI. And the complainant further avers that each of the persons named in the last preceding paragraph hereof and stated to have made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, and as a part of the said application, and as a necessary and material step in the proceedings to obtain a patent for the land by him or her sought

to be entered, did file in the said land office a written statement, of the [64] character, substance, tenor and purport prescribed by the act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently and deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use and benefit, and that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself, whereas in truth and in fact each of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, and not for his or her own exclusive use and benefit, and had made an unlawful and fraudulent agreement with the said defendants, as aforesaid, whereby the title by him or her to be acquired should inure to the use and benefit of the said defendants; and the said statements so made by the said persons and each of them were known by the said persons and by each of them, and were known by the said defendants, to be false, untrue, fraudulent and deceitful.

XII. And the complainant further avers that each of the said persons hereinbefore named and stated to have made the entries hereinbefore mentioned and designated, did, in the course of the said

proceedings had and prosecuted by them as aforesaid, appear before the officers of the aforesaid land office and did, on his or her oath [65] and in writing, make answers to the several interrogatories which had been as aforesaid prescribed by the Commissioner of the General Land Office to be propounded to persons seeking to make entries under the aforesaid act of Congress, which said interrogatories are hereinbefore set out, and which were propounded to each of the said persons; and in so making answer to the said interrogatories, each of the said persons did, upon his or her oath in writing, falsely, fraudulently and deceitfully declare and swear that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part to the benefit of any person except himself or herself, and that he or she so making the entry by him or her offered to be made in good faith for the appropriation of the land sought to be entered exclusively to his or her own use and not for the use or benefit of any other person, and that no other person than the said person so offering to enter, and no firm, corporation or association, had any interest in the said entry or in the land sought to be entered or in the timber standing upon the said land; whereas in truth and in fact each of the said persons had, as aforesaid, theretofore made and entered into the agreement hereinbefore stated with the said defendants, which agreement was then still

continuing and subsisting, whereby each of the said persons so seeking to make entry had agreed to sell the land by him to be entered to the said defendants or some of them, and the title to be acquired by each of said persons was to inure to the benefit of the [66] said defendants; and the said answers so made by the said persons to the said interrogatories were by the said persons and by the defendants known to be false and fraudulent.

XIII. And the complainant further avers that several of the said persons named in the ninth paragraph hereof and therein stated severally to have made entries of divers tracts of public land, did, before the time they appeared at the aforesaid land office to make the proof required by the statute aforesaid and to answer the interrogatories hereinbefore mentioned as required to be answered by them, receive and accept from the said defendants or some of them, certain sums of money, which sums were furnished and advanced to the said persons by the said defendants or some of them, in pursuance of and in accordance with the unlawful and fraudulent agreements and arrangements hereinbefore stated and alleged to have been made between the said defendants and the said other persons, whereby the said defendants were to advance to the said other persons such money as should be necessary to enable such other persons to pay for and purchase the several tracts by such other persons respectively to be entered and purchased; and the said sums of money were by the said defendants furnished, and by the said other persons received and accepted, for

the purpose of enabling the said other persons to make entries of, and to pay for, the several tracts of public land intended to be entered by such other persons, and upon a mutual agreement and understanding in each case that such money was to be so used and applied by the recipient thereof; and [67] the said persons so receiving the said sums of money did use the same for the purpose aforesaid, and each of the said persons did, in making his or her entry, pay to the officers of the said land office the purchase price required by law to be paid for the land entered and purchased by such person, and did pay the other expenses by him or her incurred in the said proceeding, with the said money obtained and derived from the said defendants, or some of them, and not with money belonging to the person making the entry or derived and obtained from other persons than the defendants. Nevertheless, each of the said persons, who had as aforesaid received the said sums of money from the said defendants, when he or she appeared at the said land office to make such proofs and to answer such interrogatories as have hereinbefore been mentioned and stated, did, in answer to those of the said interrogatories relating to the subject, on his or her oath, in writing, falsely, fraudulently and deceitfully swear and declare, in substance, that he or she intended to pay and was about to pay the purchase price required by law as aforesaid out of funds and with money belonging to him or her, and being his or her individual property, and did untruly, falsely and deceitfully state and represent that he or she had obtained such

money from other persons and other sources than the said defendants.

Wherefore, and by reason of the said false, fraudulent and deceitful representations so made by the said persons seeking to make entries of the said lands, the officers of the United States concerned in the proceedings [68] were deceived and imposed upon, and were caused to believe that the entries so offered to be made were honest and valid entries; whereas, had the said officers been by the said other persons truly informed and appraised of the fact that the several sums of money so paid for the purchase of the said lands were the property of the defendants in this cause and had been advanced as aforesaid by the said defendants, the said officers would have been caused to make, and it would have been their duty to make, further inquiry and investigation concerning the said proposed entries and the transactions connected therewith, and to give further consideration to the said entries and transactions, with the result that the facts hereinbefore stated would have been discovered, the fraudulent character of the several transactions hereinbefore set forth would have been discovered, and the making of the illegal, invalid and fraudulent entries sought by the said defendants and the said other persons to be made would have been prevented.

XIV. And the complainant further avers that, by reason of the facts hereinbefore stated, and by reason of the unlawful conspiracy among the said defendants, the unlawful agreements between the said defendants and the said other persons who made

the entries herein enumerated and designated, the perjury procured by the said defendants and committed by the said other persons in the procurement of the said entries, and the false swearing, misrepresentations and concealment of material facts committed and practiced by the said persons, and of the other matters which are hereinbefore set out, the said entries, and each of them were unlawfully made, and were and are illegal, fraudulent and invalid, and that the United States was and is defrauded thereby; and that, by [69] reason of the said facts, the officers of the United States, charged with the administration of the laws providing for and governing the disposal of the public lands, and concerned in the transactions herein stated, were deceived, defrauded, misled and imposed upon, and caused to allow the said entries to be made, and induced to approve the said entries and to issue patents thereon; and that the said patents, by reason of the said facts, are invalid, and are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation and imposition and in violation of law, and as having been issued and granted under fraudulent imposition and mistake of fact, and in fraud of the United States.

XV. And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, by their aforesaid several unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint,

mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned in connection with the several descriptions of said lands mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands heretofore described were procured, as the defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach and each of them, well knew at the time of procuring the same, in violation of the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts [70] of land in this bill of complaint described, the acts and conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, and each of them, and each and every of their employees and confederates, were illegal and fraudulent, and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent, invalid and voidable as against this complainant, and contrary to equity and good conscience, and being so, and the titles purporting to be conveyed thereby being vested in certain of the said defendants, the said patents ought to be vacated, set aside, avoided and for naught held.

XVI. And the complainant avers and charges that the patents so unlawfully and fraudulently

procured from complainant by and on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, for the several tracts of land in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

XVII. Complainant further avers and charges that pursuant to the said unlawful and corrupt combination, conspiracy and agreement, hereinbefore alleged and set forth, and to effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach did induce the said several other persons hereinbefore named in connection with the description of the said several tracts of land to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach by the name of W. F. Kettenbach, in some instances [71] to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Kettenbach, or Kester and Kettenbach, in some instances to Clarence W. Robnett by the name of C. W. Robnett; but complainant avers that in each and every instance such conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore alleged and set

forth; and that, by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States and conveyed to the said patentees are now vested in certain of the said defendants.

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its public lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and reviewable; and to the end that the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach may full, true, direct and certain answers make, according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. [72] Kettenbach and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, as such, be held for naught and set

aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay to the treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this honorable court.

(Signed) GEO. W. WICKERSHAM,

Attorney General of the United States,

Solicitor for Complainant.

[Endorsed]: Filed May 22d, 1909. A. L. Richardson, Clerk. [73]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE ROBBETT and FRANK W. KETTENBACH,

Defendants.

Notice of Motion [to Strike Portions from Amended Bill].

To the Complainant Above Named, and to C. H. Lingenfelter, United States District Attorney, for the District of Idaho, and by Virtue Thereof,

Solicitor for Complainant; and to Geo. W. Wickersham, Attorney General for the United States, and by Virtue Thereof Solicitor for Complainant, and to each of you:

TAKE NOTICE: That at the courtroom in Moscow, Latah County, Idaho, in the said District of Idaho, on the first day of the convening of said Court at the next regular term thereof at the hour of ten o'clock of said day, or as soon thereafter as Counsel can be heard, the defendants will move the above-entitled court to strike from the amended bill in equity the portions thereof set out specified in the annexed Motion upon the ground and for the reasons therein stated.

(Signed) GEO. W. TANNAHILL,
Solicitor for Defendants, Wm. F. Kettenbach, Geo.
H. Kester, William Dwyer, Clarence Robnett,
Residing at Lewiston, Idaho.

Due service of the above and foregoing notice of motion accepted by receipt of copy admitted at Lewiston, Idaho, this 21 day of June, A. D. 1909.

(Signed) C. H. LINGENFELTER,
U. S. District Attorney for the District of Idaho.
[74]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE ROBBETT and FRANK W. KETTENBACH,

Defendants.

Motion to Strike [Portions from Amended Bill].

Comes now the defendants herein, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence Robnett and files this their motion to strike out of and from the plaintiff's amended bill in equity the following portions:

1.

All of paragraph one thereof, especially that portion of paragraph one as follows: Beginning with the word "that," the first word in line 5 from the beginning of paragraph one, and ending with the word "acre," being the last word in the first line from the top of page 2; upon the ground that the same is irrelevant, redundant, surplusage and immaterial, and a matter if material for any purpose of which the Court takes judicial knowledge and notice.

2.

All of that portion of paragraph one, beginning with the word "said," the same being the first word

in line 3 from the bottom of page 2, and ending with the word “office,” the same being the last word on page two, upon the ground that the same is redundant, surplusage, irrelevant and immaterial. [75]

3.

All of paragraph 2, upon the same ground and for the same reason.

4.

All of paragraph 3 thereof, upon the same ground and for the same reason.

5.

All of paragraph 4 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

6.

All of paragraph 5, and all of paragraph 6 thereof, upon the same ground and for the same reason.

7.

All of that portion of paragraph 7, beginning with the word “and,” the same being the second word in line 14 from the beginning of paragraph 7 and ending with the word “complainant,” the same being the 4th word in line 18 from the beginning of said paragraph 7, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

8.

All of that portion of paragraph 7, beginning with the word “that,” the same being the 5th word in line 18 from the beginning of said paragraph 7, and ending with the word “United States,” the same being the last word of paragraph 7, upon the ground that the same is redundant, surplusage, irrelevant,

immaterial and indefinite and uncertain, and does not specify whether said alleged contract or agreement was made prior to the filing of the sworn statement, or subsequent thereto, and prior to the making of final proof. [76]

9.

All of paragraph 8 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

10.

All of paragraph 12 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

11.

All of paragraph 13 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

12.

All of paragraph 14 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

13.

All of paragraph 15 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

14.

All of paragraph 17 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

Upon the argument of said motion, there will be used the amended bill in equity heretofore filed herein; the defendants' original Notice of Motion

heretofore served and filed herein, and all of the files and records in the cause. [77]

(Signed) GEO. W. TANNAHILL,
Solicitor for Defendants, Wm. F. Kettenbach, Geo.
H. Kester, William Dwyer, Clarence Robnett,
Residing at Lewiston, Idaho.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants in the foregoing motion, and that said motion is made in good faith, and not for the purpose of delay, and is as affiant verily believes, well founded in point of law.

(Signed) GEO. W. TANNAHILL.

Subscribed and sworn to before me this 21st day of June, A. D. 1909.

[Seal] (Signed) SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, Idaho.

[Endorsed]: Filed June 23, 1909. A. L. Richardson, Clerk. [78]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,
WILLIAM DWYER, CLARENCE ROB-
NETT and FRANK W. KETTENBACH,
Defendants.

Demurrer to Amended Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Comes now the defendants, Wm. F. Kettenbach, William Dwyer, Clarence Robnett, Geo. H. Kester and demurs to the amended bill in equity of the complainant on file herein, and for cause of demurrer alleges:

1.

That said amended bill does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof.

2.

That there is a misjoinder of parties defendant in said amended bill and such misjoinder consists in this, that said Wm. F. Kettenbach, Geo. H. Kester and William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach; no concert of action appearing from the amended bill and no allegations wherein the said parties can be [79] made jointly liable for any act or violation of law, and it does not appear from said amended bill that the said defendants were to share jointly or at all in the proceeds of said land, or the money received therefrom, or contributed jointly for the procuring of said parcels or tracts of land, or either thereof; and it does not appear from said amended bill that the said defendants are jointly liable for any act or violation of the law, or the rules of equity in any way or manner whatsoever.

3.

That said amended bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and the said amended bill does not state facts sufficient to show that the above-entitled court has jurisdiction over any of the subject matter contained or pleaded therein, or jurisdiction to hear and determine the same.

4.

That said amended bill is indefinite, unintelligible, ambiguous and uncertain, and that such uncertainty consists in this, to wit, that it does not appear therefrom in what way or manner the said defendants acted, or what overt acts were committed by either of said defendants in procuring title to said tracts of land, or any part thereof, or the manner in which the said land was acquired.

5.

That the said amended bill in equity is further indefinite, unintelligible, ambiguous and uncertain, and such uncertainty consists in this, to wit, that it does not appear therefrom whether or not the said alleged [80] agreements or either or any thereof were made prior to the filing of the sworn statement of the various entrymen, or subsequent to the filing of the sworn statement, and prior to the making of final proof; and it does not appear therefrom that the said tracts of land, or either thereof, at the date of the filing of the original bill in equity herein stood

of record in the names of the said defendants, or either thereof.

6.

That the said amended bill, as a whole, does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof.

WHEREFORE, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence Robnett demand judgment on their demurrer.

(Signed) GEO. W. TANNAHILL,
Solicitor for Defendants, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer, and Clarence Robnett, Residing at Lewiston, Idaho.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the demurring defendants above named, and that said demurrer is made in good faith, and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

(Signed) GEO. W. TANNAHILL. [81]

Subscribed and sworn to before me this 21 day of June, A. D. 1909.

[Seal] (Signed) SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County.

Rec'd copy June 21, 1909.

C. H. LINGENFELTER,
U. S. Dist. Atty.

[Endorsed]: No. 388. Filed June 23, 1909. A. L. Richardson, Clerk. [82]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Praecipe to Set Down Demurrer to Amended
Complaint for Hearing.**

The clerk of the Court will please note the demurrer filed by the defendants to the amended bill of complaint in the above-entitled cause as set down for argument by the complainant on the first day of the next regular term of the court to be held at Moscow, in Idaho, upon the coming in of the court on the said day or as soon thereafter as counsel can be heard.

PEYTON GORDON,

CHARLES A. KEIGWIN,

Solicitors for Complainant.

In accordance with the foregoing praecipe the demurrer to the Amended Complaint in the above-entitled cause is hereby set down for argument upon the first day of the next regular term, being the October, 1909, term, at Moscow, Idaho, or as soon thereafter as counsel can be heard.

Dated August 17, 1909.

A. L. RICHARDSON,

Clerk. [83]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

The clerk of the Court will please note the demurrer filed by the defendants to the amended bill of complaint in the above-entitled cause as set down for argument by the complainant on the first day of the next regular term of the court to be held at Moscow, in Idaho, upon the coming in of the court on the said day or as soon thereafter as counsel can be heard.

PEYTON GORDON,
CHARLES A. KEIGWIN,
Solicitors for Complainant.

[Endorsed]: Filed August 17, 1909. A. L. Richardson, Clerk. [84]

*In the Circuit Court of the United States for the
Ninth Judicial Circuit, District of Idaho, North-
ern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, WILLIAM DWYER, CLARENCE W.
ROBNETT, FRANK W. KETTENBACH,
Defendants.

**Answer and Disclaimer of Frank W. Kettenbach [to
Amended Bill].**

THE ANSWER AND DISCLAIMER OF FRANK
W. KETTENBACH, DEFENDANT, TO THE
AMENDED BILL OF COMPLAINT OF THE
UNITED STATES OF AMERICA, COM-
PLAINANT.

This defendant, Frank W. Kettenbach, reserving to himself all right of objection to the said amended bill of complaint, for answer thereto says:

That this defendant denies wholly and in each and every detail and particular each and every allegation in the said bill of complaint contained, as to acts and things done by this defendant, including all the allegations of combination, conspiracy, confederation and agreement, and avers that the same and each and every of the said allegations in the said bill of complaint are wholly, and in each and every detail, untrue.

As to all other allegations in said bill of complaint contained, this defendant is a stranger.

This defendant has never had any right, title, claim or interest in any of the real property, or any of the entries thereof or claims thereto, described in the [85] said bill of complaint, and hereby disclaims any right, title, claim and interest therein whatsoever.

Therefore, this defendant leaves the complainant to make such proof of the said bill of complaint as it shall be able to produce.

This defendant, further answering, denies that the complainant is entitled to relief, or any part thereof, in the said bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the said bill of complaint, and humbly prays to be dismissed with his reasonable costs and charges in this behalf sustained.

(Signed) FRANK W. KETTENBACH,

(Signed) JAMES E. BABB,

Solicitor and of Counsel for Defendant, Frank W.

Kettenbach, Residence and Postoffice Address:

Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

I, Frank W. Kettenbach, being first duly sworn, on oath depose and say: That I am one of the defendants in the above-entitled cause; that I have read the foregoing answer and disclaimer, signed by me, and know the contents thereof, and that the same is true of my own knowledge.

(Signed) FRANK W. KETTENBACH.

Subscribed and sworn to before me this 1st day of October, 1909.

(Signed) JOHN R. BECKER,
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed October 2, 1909. A. L. Richardson, Clerk. [86]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
WILLIAM DWYER, CLARENCE ROBNETT, FRANK W. KETTENBACH,
Defendants.

Replication to Answer and Disclaimer.

Replication of complainant in the above-entitled cause to the answer and disclaimer of Frank W. Kettenbach, defendant:

This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer and disclaimer, for replication thereto saith that it will ever aver, maintain and prove its said bill to be true and sufficient in law, and that said answer and disclaimer is untrue and insufficient; whereupon repliant prays relief as in said bill of

complaint set forth.

PEYTON GORDON,
GEO. V. TRIPLETT, Jr.,
Special Assistants to the Attorney General,
Solicitors for Complainant.

[Endorsed]: Filed Nov. 1, 1909. A. L. Richardson, Clerk. [87]

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
WILLIAM DWYER, CLARENCE W.
ROBNETT, FRANK W. KETTENBACH,
Defendants.

Opinion on Exceptions for Impertinency.

PEYTON GORDON, Esq., and GEO. V. TRIPLETT, Jr., Esq., Special Assistants to the Attorney General, Solicitors for Complainant.
GEORGE W. TANNAHILL, Esq., Solicitor for Defendants.

DIETRICH, District Judge:

This suit was commenced by the United States to cancel several patents to lands the title of which was acquired under the provisions of the Timber and Stone Act. The theory of the complainant is that the defendants entered into a conspiracy for the wrongful acquisition of these lands, the scheme being to induce various qualified persons to make

entries, ostensibly for themselves, but in reality upon behalf of the defendants and for their use. It is charged that in their initiatory applications the entrymen falsely represented that they applied to enter the lands in [88] good faith, etc., as provided by law, and that also, at the final proof, they further represented that they had not, since filing their applications, entered into any agreement for the alienation of the lands, or any interest therein. No discovery is sought, and answer under oath is waived. The original bill was filed before the decision in the Williamson case (207 U. S. 425), prior to which the Interior Department maintained and enforced the view that an entryman, proceeding under the Timber and Stone Act, could not lawfully make any agreement for the alienation of an interest in the land, or the timber growing thereon, until after final proof. In sustaining the demurrer to the bill, which was submitted after the Williamson case had been decided, it was suggested by the court that possibly the complainant would deem it desirable to re-form the bill to bring it into harmony with the rule of that case, it being assumed, without argument, that in re-drafting the bill certain portions thereof would probably be eliminated. A different view, however, was taken by the government, and the allegations relating to the final proofs, amplified and supplemented, have been retained in the amended bill, to which the defendants have interposed what they designate as a motion to strike out certain portions thereof, on the ground, as stated in the motion, that the specified paragraphs are "irrelevant, redundant, surplusage

and immaterial.” Such a motion would be a proper pleading under the Idaho code if the suit were pending in the State courts, and doubtless counsel for the defendant inadvertently fell into the error of assuming that a like practice prevails upon the equity side of this court. Attention having, at the argument, been called to the impropriety of such a [89] motion here, defendants have now asked leave to file exceptions for impertinency, to take the place of the motion, the exceptions tendered being directed to substantially the same matters covered by the motion. While the original paper is called a motion, instead of exceptions, and while it describes the objectionable matter as being “irrelevant, redundant and immaterial,” instead of describing it as being “impertinent,” the courts are concerned with the substance, and not the form, and I therefore think that, without impropriety, the paper may be considered as presenting exceptions for impertinency; and such is the view that I shall take of it. To charge that matter is irrelevant and redundant is substantially to charge that it is impertinent, and a mere misnomer of a pleading is ordinarily held to be immaterial and nonprejudicial. *Bassett vs. Twin City Power Company*, 111 Fed. 45. However, the defendants are permitted to file the paper now presented and designated “Exceptions to the Amended Bill.”

Many of the exceptions are directed to those paragraphs of the bill which set forth the rules and regulations of the Department of the Interior prescribing certain interrogatories to be propounded to applicants for timber land at the final proof, and the

scope of the alleged conspiracy, so far as it relates to such proofs, and other acts of the entrymen pertaining thereto, it being the contention of the defendants that, under the rule of the *Williamson* case, these final proofs were exacted without warrant of law, and that, therefore, the averments pertaining thereto are impertinent. The complainant, denying to the *Williamson* decision an [90] effect so sweeping, contends that the final proof may properly be pleaded and exhibited in evidence. Its theory seems, in part, to be disclosed in the bill itself, where it is alleged that the defendants induced the entrymen falsely to answer these final proof questions, and the entrymen made false answers "for the purpose and to the end that the said officers and the other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might, and should, thereby be deceived, imposed upon, and fraudulently misled, and so prevented from further inquiry, investigation and consideration concerning such entries."

If we assume the correctness of this conclusion, and it is difficult to anticipate how it could be proved or disproved, upon what theory can final proof be material? A full investigation and disclosure of the facts in the case must discover the existence of one of three possible conditions: First, that the entryman, from the beginning, acted in good faith, and never alienated, or agreed to alienate, any interest in the land,—in which contingency obviously the government could not now recover; or, second, that

while at the time the applicant made his initial declaration no other person had any interest, direct or indirect, in the entry, subsequently, and prior to final proof, an agreement of sale was entered into,—in which case, under the rule of the *Williamson* decision, as also of the *Biggs* case (211 U. S. 507), he would have been guilty of no wrong, and would be entitled to patent. For if, in order to [91] induce the land officers to grant to him that which, under the law, he was undoubtedly entitled to receive, he concealed from them immaterial facts, reprehensible though his conduct might be from a moral viewpoint, there would be no actionable wrong; while its officers might thus have been deceived, the Government was not defrauded.

The other possible contingency is that the entryman, from the beginning, acted in bad faith, his original sworn declaration being false; and such is the case exhibited by the bill. But if the original declaration was false in material respects, and the officers of the Government charged with the disposal of public lands were thereby induced to accept the application, and thereafter to issue the patent, how could it now be material whether or not these officers were, at a later date, by other false representations on the part of the entryman, deterred from making inquiry into the truthfulness of the original declaration? No law imposed upon them the duty to make such investigation, and the fact that the officers were twice deceived, if deceived at all, does not enlarge the complainant's rights or strengthen its case. If there was no actionable fraud in the orig-

inal declaration, there was none at all. If the original declaration was fraudulent, there being no obligation upon the part of the government to discover the fraud, it is now immaterial whether or not its officers were, by the conduct of the entrymen, thereafter diverted from an investigation which they might otherwise have voluntarily made. If the failure upon the part of the officers of the Government to detect the fraud in the original declaration, prior to the issuance of patent, [92] concluded all inquiry into the bona fides of the entry, the complainant's contention would not be devoid of merit, for it would become material to show that by the deceit of the entrymen the officers were prevented from performing their duty and making the discovery; but it is not contended that such is the rule; no legitimate avenue of inquiry which was then open to the officers of the land department is now closed to this judicial inquiry. It must be borne in mind that the plaintiff, in urging this point, does not pretend that the false statements made by the entrymen at the final proof, independently and of themselves, confer upon the plaintiff a right of action. Such contention was made and rejected in the *Biggs* case. While that was a criminal case, the charge there, as here, was of a conspiracy to defraud the Government out of timber lands by substantially the same scheme as is here alleged to have been devised and used by the defendants. Mr. Justice White, delivering the opinion of the Court, said:

“It is insisted by the Government that, however conclusive may be this ruling as to the

power of the applicant to sell after application and to perfect his entry for the purpose of enabling him to perform such contract, such ruling does not conclude the contention that a conspiracy formed to induce an entryman who has made his application to purchase subsequently to agree to convey his interest in the land would be a violation of the statute. But we are constrained to say that this is a mere distinction without a difference. The effect of the ruling in the *Williamson case* was to hold that the prohibition of the statute only applied to the period of original application, and ceased to restrain the power of the entryman to sell to another and perfect his entry for the purpose of transferring the title after patent. This being concluded by the decision in the *Williamson case*, the distinction now sought to be made comes to this, that it is unlawful under the statute to conspire to have that done which the statute did not prohibit, and, on the contrary, by implication recognized could be lawfully done without prejudice or injury to the United States in any manner whatever. This also serves to demonstrate that no error was committed by the court below in holding that under 5440, Rev. Stat., the acts charged in the indictment [93] could not possibly have constituted a defrauding of the United States in any manner or for any purpose within the intendment of that section."

The primary fraud lies in the false application, and the actionable wrongdoing of the claimant con-

sists of that which he did prior to and at the time of making his application, and not what he did thereafter. If we were to assume falsity in the answers referred to by the complainant as having been made at the time of final proof, nevertheless failure to prove falsity in the primary application would be fatal to the complainant's right to recover. Upon the other hand, if we assume the falsity of the primary application, falsity in the final proof is not necessary, and hence becomes immaterial to the plaintiff's right of recovery. In either alternative, the controlling issue is ruled solely by the character of the primary application.

It remains to consider whether or not the final proofs are of evidentiary potency as tending to prove that the entries were illegal in their inception. Aside from the question of the propriety of pleading matters which thus, by hypothesis, are only of probative value, upon what theory, or by reference to what principle of evidence, may they be regarded as proofs of the original fraud? For example, in his declaration, the entryman, upon oath, states that he makes the application "in good faith to appropriate the land to his own exclusive use and benefit, etc." One of the interrogatories propounded upon final proof was: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit [94] of another person?" By each entryman in this case, according to the allegations of the bill, this question was answered in the affirmative. If the question and answer be construed as relating back to the time

of the inception of the entry, the answer thereto is not only consistent with, but is a mere repetition of, the initiatory sworn statement. How, then, can it be regarded as proof of the falsity of such original declaration without indulging the unreasonable assumption that the consistent repetition of a statement under oath is proof of its falsity?

If it be suggested that by extrinsic evidence it can be and will be shown that the answer to the interrogatory was untrue, the reply is that, under the rule of the *Williamson case*, it would be immaterial to show the falsity of the answer so far as the question relates exclusively to the period following the filing of the original application; and as to the preceding period, it is obvious that any evidence tending to impeach the answer so far as it relates to that period would, with equal force and directness, tend to disclose the falsity of the like statement contained in the declaration, and such evidence would therefore be admissible in support of the charge of primary fraud in making a false application, without the circuitous device of pleading and exhibiting in evidence the final proof. From this statement I am not to be understood as holding that such evidence would necessarily tend to prove fraud in the original declaration, but only that, *if* it has a tendency to discredit an answer at the final proof, directed to conditions existing at and prior to the time of the primary application, the relevancy of such evidence in no wise depends upon the existence or the character of the [95] final proof.

Finally, it is argued that deception in the final

proof may be established as tending to show fraudulent motive in the original application. The argument here consists of little more than a mere statement of the proposition; no precedent is cited, nor is there any very clear reference to general principles. The difficulty seems to lie in the apparent reluctance of counsel for the government fully to accredit the *Williamson* decision, and to recognize the fact that prior to its rendition the officers charged with the disposal of public lands were improperly, though without wrongful intent, refusing to issue patents for timber lands to entrymen who, however perfect their good faith prior to and at the time of their primary application, subsequently and before final proof, agreed to alienate their title when it should be procured. Knowing of this rule of the Interior Department, and of its strict enforcement, the entryman who was guilty of no wrong up to the time of his application, and who made an honest and truthful declaration, but who thereafter, and prior to final proof, contracted to sell, was, if he would procure patent, compelled to answer the questions at final proof precisely as it is alleged they were answered by the entrymen here. If, therefore, two men, one of whom made his application in good faith, and one of whom made his application in bad faith, were, in order to secure patent, compelled both to answer the questions put to them at final proof, in the same way, how can such answers be regarded as proof of fraudulent intent in the original applications? But as I view it, the point is foreclosed by the *Williamson* decision, adversely to the Govern-

ment, and therefore [96] any extended consideration would be gratuitous. Upon mature reflection, I am unable to yield to the suggestion that, in so far as this point is involved, the *Williamson* decision is *obiter*, nor am I able to perceive a material distinction in principle between that case and this. It is true that the point was not vital to the conclusion reached by which the judgment of the lower court was reversed; but it was fairly presented upon the record, was material, and was deliberately decided as involving a question which might arise upon a future trial. Mr. Justice White, who delivered the opinion of the court, after clearly defining the limited scope and function of the final proof as prescribed by the Timber and Stone Act, states his conclusion in the following language:

“As then there was no requirement concerning the making in the final proof of an affidavit as to the particulars referred to, and as the entryman who had complied with the preliminary requirements was under no obligation to make such an affidavit and had full power to dispose *ad interim* of his claim upon the final issue of patent, we think the motive of the applicant at the time of the final proof was irrelevant, even under the broad rule which we have previously in this case applied, and therefore that error was committed not alone in instructing the jury that the indictment covered or could cover the procurement of perjury in connection with the final proof, and that the jury might base a conviction thereon, but in admitting the final proof

as evidence tending to show the alleged illegal purpose in the primary application for the purchase of the lands.” 207 U. S. 462.

We have here a clear declaration that the motive of the entryman at the time of final proof is irrelevant, and that the final proof is not admissible “*as evidence tending to show the alleged illegal purpose in the primary application.*” In reaching this conclusion, the court was not unmindful or unappreciative of the rule allowing great latitude in the reception of circumstantial evidence to establish unlawful motive or intent, in [97] charges involving offenses incapable of direct proof. Earlier in the opinion this rule is liberally stated and expressly approved, but, it is said in the extract already quoted, “*we think the motive of the applicant at the time of final proof was irrelevant, even under the broad rule which we have previously in this case applied.*”

The fact that in the *Williamson* case the charge was of a conspiracy to suborn perjury, whereas here it is of a conspiracy to defraud, presents a distinction more apparent than real. Both cases involve violations of the Timber and Stone Act; the purpose, method and means employed in both are identical; the form and appellation of the charges may be different, but the facts constituting them are the same. Bearing in mind the circumstances of each case, proofs of one charge are proofs of the other, for the specific charge of perjury necessarily implies fraud, and the specific charge of fraud necessarily implies perjury. Of course I am not to be understood as

holding that the proofs are necessarily identical or coterminous. Evidence sufficient to disclose a case of fraud might, both in volume and scope, fall far short of establishing the charge of perjury. But in the *Williamson case* the Court was not considering the sufficiency of the final proof as evidence, but its relevancy; not how much weight it had, but had it any weight at all. And the trial court was held to have committed error in admitting it as tending to substantiate the charge. Bearing in mind the nature and scope of the averments in that case and in this, I am wholly unable to conceive how a class of facts irrelevant and having no tendency to prove that charge of subornation of perjury could be relevant or have a tendency to prove this charge of fraud. [98]

For the reasons stated, I have concluded to allow the exceptions to paragraphs two, five, six, eight, twelve, and thirteen, and to deny the others. To be sure, in paragraph eight there are some averments relating to the primary application, but they are in substance only repetitions of allegations of a like character contained in other parts of the bill, and, with the designated paragraphs stricken out, the averments relating to the preliminary application are amply sufficient to admit of all proper evidence relating to fraud therein.

In reaching this conclusion, I have not been unmindful of the rule that if there is doubt of the pertinency of the matter excepted to, the exceptions should be denied, nor have I withheld due consideration of the complainant's suggestion that the reten-

tion in the bill of such matter, even if it be impertinent, would be without material prejudice to the defendants. It need only be said that my mind is free from doubt, and I am unwilling to permit needless augmentation of the expense of litigation which at best must be a heavy burden. It is sometimes said that impertinent matter may be retained, and, by the imposition of costs upon the offender, the rights of the innocent party may be fully protected. While not infrequently in cases of litigation between private parties such a course may be practicable, if we consider here only the interests of the defendants, the Government being the adversary party, and the power of the Court to impose costs being therefore limited, no adequate relief could thus be administered. But were it otherwise, considerations of [99] public interest require the court, so far as lies within its power, to check and not to lend its approval to the needless expenditure of public funds. Aside from the question of the impertinency of the paragraphs referred to, the volume of the bill is otherwise greatly enlarged by an affluence of synonyms and a rhetorical elaboration rarely found in pleadings of this character. The general rules of equity practice contemplate and require that bills shall be expressed in concise language, and shall contain no unnecessary verbiage. That the matter of expense to which I have referred is not trivial, but is a substantial consideration, becomes apparent by reference to the fact that at the threshold of this and two other suits of like nature, between practically the same parties, pending in

this court, the cost merely of taking out copies of the bills for service upon the defendants, as I am informed, exceeds six hundred dollars. If the averments of the bills are specifically traversed or admitted, as presumably they will be, the answers cannot well be less voluminous; and further considering the probability of separate answers, and the possibility of a record on appeal, the aggregate expense may easily become prohibitive upon a litigant of limited means.

Let an order be entered permitting the filing of the formal exceptions, and allowing the exceptions to paragraphs two, five, six, eight, twelve, and thirteen of the amended bill, and denying them as to other paragraphs thereof.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,
Judge. [100]

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [101]

*In the Circuit Court of the United States, Ninth
Circuit, District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER. WILLIAM DWYER, CLARENCE W.
ROBNETT, FRANK W. KETTENBACH,
Defendants.

Opinion on Demurrer.

PEYTON GORDON, Esq., and GEO. V. TRIP-
LETT, Jr., Esq., Special Assistants to the At-
torney General, Solicitors for Complainant.

GEORGE W. TANNAHILL, Esq., Solicitor for De-
fendants.

DIETRICH, District Judge:

By this suit the complainant seeks a decree annulling several patents for land issued under the provisions of what is known as the Timber and Stone Act, to different entrymen, who, it is alleged, in violation of the law, and contrary to their oaths, severally entered the lands as the agents and for the use and benefit of the defendants, who had heretofore conspired to procure the lands fraudulently, and to whom the entrymen severally conveyed the legal title after the issuance of patents, and prior to the commencement [102] of this suit. The alleged wrongful acts of the defendants and of the entrymen are set forth in great detail in the amended bill, to which the defendants have interposed a demurrer whereby it is objected: First, that the bill is, in certain particulars, uncertain and unintelligible; second, that the Court is without jurisdiction of the subject matter; third, that it does not appear that the complainant is entitled to any relief; and fourth, that the bill is multifarious in that the defendants are improperly joined.

The facts constituting the alleged fraud are, I think, stated with such clearness and detail that the defendants cannot be left in doubt as to what the

real issues are, and they are in no danger of being misled or taken by surprise.

It is not doubted that the Court has jurisdiction in proper cases to vacate patents procured by fraud, and only so far as it may be involved in the question whether or not complainant exhibits facts sufficient to entitle it to relief, is the point of jurisdiction relied upon.

As to the general question of the sufficiency of the bill, defendants' position is stated as follows:

“It affirmatively appears from the amended bill that the United States has not been defrauded; that the complainant has received the purchase price; that the entrymen were all qualified to make entry of the lands, and that each and all of the entrymen were entitled to acquire the lands; and the only complaint made by the complainant and pleaded in the amended bill is in regard to some details of the manner of acquiring the same, which in no way or manner affects the validity of the claimant's rights. . . . The fraud for which courts will set aside patents granted by the United States in the regular course of proceedings in the land office are frauds extrinsic or collateral to the matter tried and determined upon which the patent issued, and not fraud consisting of perjury in the matter on which the determination was made.” [103]

It may be inferred from the bill that the entrymen were duly qualified, and that they fully paid the purchase price for the land, no part of which the

Government has tendered, or now tenders, back But it also affirmatively appears that, in their sworn preliminary statements filed in the land office, they falsely represented that they were entering the lands for their own use and benefit, whereas in fact they were acting as the agents of the defendants, and had, prior to making application, entered into agreements with the defendants to transfer title to them as soon as the same should be procured from the United States; all of the proceedings in the land department were *ex parte*.

In support of the contention that the Government cannot maintain a suit to set aside a patent procured by the perjured statements of an entryman, defendants rely almost exclusively upon *United States vs. White et al.*, 17 Fed. 561, and *United States vs. Miner*, 26 Fed. 672; but, upon appeal, the latter case was reversed by the Supreme Court of the United States (114 U. S. 233), and the correct rule, now universally prevailing, was stated to be that, "in proceedings like the present, wholly *ex parte*, no contest, no adversary proceedings, no reason to suspect fraud, but where the patent is the result of nothing but fraud and perjury, it is enough to hold that it conveys the legal title, and it would be going quite too far to say that it cannot be assailed by a proceeding in equity, and set aside as void, if the fraud is proved and there are no innocent holders for value." See, also, *United States vs. Clark*, 200 U. S. 601; *United States vs. Detroit Lumber Company*, 200 U. S. 321; and *Hyde vs. Shine*, 199 U. S. 62. [104]

To entitle the United States to the cancellation of a patent fraudulently procured, a return of the purchase money paid by the entryman is unnecessary. *United States vs. Trinidad Coal and Coking Company*, 137 U. S. 160. Even were this not a general rule, the act under the provisions of which these titles were obtained prescribes that if the entryman swears falsely in his preliminary application, not only shall he be subject to all the pains and penalties of perjury, but he shall also "forfeit the money which he may have paid for said lands, and all right and title to the same."

It remains to consider whether or not the bill is multifarious. "Multifariousness may be defined as the improper joining of distinct and independent matters in one bill, or the improper joinder of parties not connected with the controversy in its proper and legitimate scope." *Street on Fed. Eq. Prac.*, Sec. 399. In determining whether or not such an objection is well taken, general principles rather than specific rules must be applied. The question rests largely in considerations of convenience to the parties and to the court, and hence, with certain limitations, an objection for multifariousness is one addressed to the sound discretion of the court. No fixed general rule can be applied, but upon the peculiar facts of each particular case the Court must consider the real and substantial convenience of all concerned, and test the pleading accordingly.

The bill here avers combination and concert of action as between all of the defendants to fraudulently procure the issuance of the patents under con-

sideration. There is no intimation, however, that there [105] was any concert of action between the several entrymen, or that the proceedings relating to and resulting in the issuance of one patent had any connection whatsoever with the proceedings relating to and resulting in the issuance of any other patent. So far as appears, the several proceedings in the land office were entirely distinct one from the other. I cannot, therefore, yield to the contention of the Government that the case comes within the rule or principle applied by Mr. Justice Harlan in *Osborne vs. Wisconsin Central Railroad Company*, 43 Fed. 824, where it was found that "the issues between the railroad company and each of the plaintiffs depend upon precisely the same questions of law, and upon the same facts." There it was not possible that one plaintiff should succeed unless all succeeded. Here, it is obvious, the complainant may be successful in causing one patent to be cancelled and fail as to all of the others; or it may succeed as to all but one, and fail as to that, for the alleged acts of fraud upon the part of the entrymen, upon the proof of which the Government must primarily depend, took place at different times, and those relating to one patent had no necessary connection with those relating to any other patent. Apparently there is a misconception on the part of counsel both for the Government and for the defendants as to the essential nature and purpose of the suit. It is not an action in tort, brought to recover damages resulting from the execution of an unlawful conspiracy entered into by the defendants; nor are we concerned

with the essential averments of a criminal indictment charging conspiracy to defraud. The conspiracy which, with [106] such elaborate detail, is set forth in the bill is not the gist of complainant's right of action. Complainant might make proof sufficient to warrant a jury in finding the defendants guilty of the crime of conspiring to defraud the United States, and still fail of showing facts sufficient to entitle it to recover in this action. On the other hand, it might wholly fail to establish the existence of the alleged conspiracy, and still be entitled to a decree setting aside the patents for fraud. The action is directed to, and the decree sought would operate upon, the legal title to the several tracts of land described in the bill. The relief prayed for is that the present holders of the legal title be divested thereof, and that the complainant be reinvested therewith. The primary question is whether or not the several entrymen procured title by means of fraudulent representations. If they did so procure the title, complainant may demand that the patents be set aside, unless such title is now held by an innocent purchaser. It is, therefore, not primarily material whether there was a conspiracy or not. The conspiracy is relevant and material to the relief sought only so far as the existence thereof, if established, tends to prove the truth of the fundamental averment that the title was procured by false swearing. Considered only as conspirators, the defendants are not necessary parties defendant any more than are the several entrymen. The only indispensable parties are those whose rights would

or could be affected by the decree, [107] and they are the persons who have, or claim, some present interest in the lands or in the title thereto. It follows that all known persons having or claiming any interest, and only such, should be made defendants.

But it does not follow that because there were seventeen distinct proceedings in the land office to procure the patents now assailed, the bill should be held to be multifarious. It is here not only alleged that all the defendants acted in concert in inducing the entrymen fraudulently to procure the patents, but it is also expressly charged that, prior to the commencement of the suit, the several tracts of land were conveyed, in some instances to George H. Kester, in some instances to William F. Kettenbach, in some instances to George H. Kester and William F. Kettenbach, and in some instances to Clarence W. Robnett; and that in "each and every instance such conveyances were executed for the benefit of said defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, and Frank W. Kettenbach, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore alleged and set forth; and that by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States and conveyed by the said patents are now vested in certain of the said defendants."

If the convenience of the complainant alone be considered, there is no question that, by permitting

the suit to proceed upon the bill as framed, a multiplicity of suits will be avoided, and its rights may be tried out with less expense than if it were driven to commence [108] and prosecute seventeen different suits. Upon the other hand, if only the convenience and substantial rights of the defendants be considered, can any different conclusion be reached? It is alleged that they hold the legal title to all of these lands, whether jointly or severally does not clearly appear; nor does it appear just what their several interests are; but it is alleged that they have some interest. It is further alleged that they were jointly engaged in the unlawful conspiracy, pursuant to which the entrymen were induced to make the entries, and, by false representations, to acquire the titles now sought to be divested. If any one of the defendants has no present interest in any of the lands, he may file a disclaimer, and thus be relieved from the burden of making a defense. If the defendants are jointly interested in all of the lands described, then clearly the inclusion of all of the tracts of land in the one bill can result only in great saving of expense to them; and it is not suggested, nor have I been able to apprehend, how any one of the defendants could be otherwise prejudiced in his substantial rights by reason of the joinder. True, there is no positive or unequivocal averment of joint interest in each separate tract, but, taken as a whole, I think the bill may be fairly construed as alleging that the defendants' present relations to all of the lands are such that the Government could not safely proceed against any one patent without joining all

of the defendants as parties defendant to the suit. Such being the case, every consideration of economy, both of time and of expense, is with the present form of the bill, and, there appearing to be no embarrassing complexity [109] of procedure, by which the substantial rights of any party will be prejudiced, I am unable to yield to the defendants' contention that the bill should be held to be multifarious.

In reaching this conclusion, I necessarily assume the truth of the allegations of the bill. If, after appropriate and timely pleading, proof shall disclose falsity in those parts of the bill charging conspiracy and community of ownership, it may then become proper to consider whether or not complainant should prevail, even if fraud be shown in some or all of the patent proceedings.

As has already been suggested, in considering an objection for multifariousness, the decided cases are, as a rule, of only incidental value, but, as throwing some light upon the question here decided, reference is made to *Brown vs. Guarantee Trust Co.*, 128 U. S. 403; *United States vs. Clark*, 129 Fed. 241; S. C., 200 U. S. 601; *United States vs. Curtner*, 26 Fed. 296; *Williams vs. Crabb*, 117 Fed. 193; *Western Land and Immigration Co. vs. Guinault*, 37 Fed. 523; *United States vs. Flournoy*, 69 Fed. 886; *Curran vs. Champion*, 85 Fed. 67; *Bitterman vs. Louisville & N. R. Co.*, 207 U. S. 205.

For the reasons stated, the demurrer will be overruled; let an order be entered accordingly, giving

defendants thirty days in which to answer.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [110]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

Northern Division—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Overruling Demurrer to Amended
Complaint].**

On this day was announced the decision of the Court upon the demurrer to the amended complaint herein, heretofore argued and submitted, which decision is in writing and on file in said cause, and it is ordered that said demurrer be and is hereby overruled and the said defendants are given thirty days from this date in which to answer.

Dated November 30, 1909. [111]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

Northern Division—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Order [Granting Defendants Leave to File Exceptions to Certain Paragraphs of Amended Bill].

On this day was announced the decision of the Court upon the exceptions to the amended complaint herein, heretofore argued and submitted, which decision is in writing and on file in said cause, and it is ordered that the said defendants have leave to file formal exception to said amended bill of complaint and said exceptions are hereby allowed to paragraphs two, five, six, eight, twelve and thirteen of said amended bill of complaint, and denied as to the other paragraphs thereof.

Dated November 30, 1909. [112]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,

WILLIAM DWYER, CLARENCE W.
ROBNETT, and FRANK KETTENBACH,
Defendants.

Exceptions to Amended Bill in Equity.

To the Honorable, the Justices of the Circuit Court
of the United States for the District of Idaho;

The defendants herein, William F. Kettenbach,
Geo. H. Kester and William Dwyer, by leave of
Court first had and obtained, files this their excep-
tions to the Amended Bill in Equity filed herein May
22, A. D. 1909, as follows:

1.

For that the allegations in the first paragraph of
said Amended Bill beginning with the word "that,"
the same being the first word in line five from the
beginning of paragraph one, and ending with the
word "office," the same being the last word on page
two, is impertinent and should be expunged.

2.

For that the allegations in said Amended Bill
commencing with the first word in line one of para-
graph two, and ending with the word "possessions,"
the same being the last word in paragraph two as
follows:

"That pursuant to the authority given by said
Act, the Commissioner of the General Land
Office prescribed [113] and promulgated cer-
tain regulations to give effect to the provisions
of said Act, among other, the following:

That after the expiration of the 60 days' pub-
lication, the person desiring to purchase the
land described in his application to purchase

should under oath, make answer to certain questions as follows:

“ ‘Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States, may, inure, in whole or in part, to the benefit of any person except yourself?’ ”

And

“ ‘Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?’ ”

And

“ ‘Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?’ ”

Also the following:

“ ‘Did you pay, out of your individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’ ”

And

“ ‘Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?’ ”

is impertinent and should be expunged.

3.

For that the allegations in paragraph 4 is impertinent, and the entire paragraph should be expunged.

4.

For that the allegations in said Amended Bill [114] commencing with the word "that," the same being the first word in paragraph 5 and ending with the word "them," the same being the last word in paragraph 5, is impertinent, and should be expunged.

5.

For that the allegations in paragraph 6 and especially that portion of paragraph 6 beginning with the word "and," the same being the 12th word in line 10 from the top of page 9, and the same being the 15th line of paragraph six, as follows:

"And it was further intended and contemplated by the said defendants that they should cause and procure each of the said other persons, who were, to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories hereinbefore mentioned and set out, to declare on oath in answer to said interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made, and that he expected to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other

sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories should in doing so commit and be guilty of wilful and corrupt false swearing and should swear falsely and corruptly and should defraud the United States, and should fraudulently deceive and impose the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, and should not pay or intend or expect to pay the [115] expenses of his filing and entry out of such funds of money, and should, moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.”

is impertinent and should be expunged.

6.

For that the allegations in paragraph 7 beginning with the word "and," the same being the 2d word in line 14 from the beginning of paragraph seven, and ending with the word "complainant," the same being the 4th word in line 18 from the beginning of said paragraph seven, is impertinent, and should be expunged.

7.

For that the allegations in said Amended Bill commencing with the word "that," the same being the 5th word in line 18 from the beginning of paragraph 7 and ending with the word "United States," the same being the last word in paragraph 7, is impertinent and should be expunged.

8.

For that the allegations in paragraph 8 of said Amended Bill are impertinent and should be expunged.

9.

For that the allegations contained in paragraph 12 of said Amended Bill are impertinent and should be expunged.

10.

For that the allegations in paragraph 13 of said Amended Bill are impertinent and should be expunged.

11.

For that the allegations contained in paragraphs 14 and 15 of said Amended Bill are impertinent [116] and should be expunged.

12.

For that the allegations contained in paragraph

17 of said Amended Bill are impertinent and should be expunged.

13.

For that the allegations in said Amended Bill commencing with the word “and,” the same being the 11th word in line 17 from the top of the last page of said Amended Bill as follows:

“And the said defendants, and each of them, be held to pay to the Treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in the about discovering and establishing the fraud as is hereinbefore set forth and charged.”

are impertinent and should be expunged.

GEO. W. TANNAHILL,
Solicitor for Defendants, William F. Kettenbach,
Geo. H. Kester and William Dwyer, Residing
at Lewiston, Idaho. [117]

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants named in the foregoing exception; that said exception is proposed in good faith, and not for the purpose of delay, and is as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29 day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: Filed Nov. 30th, 1909. A. L. Richardson, Clerk. [118]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order That the Defendants be Given Five Days
Additional to Answer.**

On motion of George W. Tannahill, Esq., it is ordered that the defendants represented by George W. Tannahill be given five days additional to the time fixed to answer herein.

Dated December 21, 1909. [119]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-

TER, WILLIAM DWYER, CLARENCE
ROBNETT and FRANK W. KETTEN-
BACH,

Defendants.

Disclaimer [of William Dwyer].

The defendant, William Dwyer, now and at all times herein saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's amended bill in equity contained, says that he does not know that he, this defendant, to his knowledge or belief, ever had, or did he claim, or pretend to have, nor does he now claim, any right, title or interest of, in or to the estate and premises situate in the county of Nez Perce, State of Idaho, and in complainant's amended bill in equity set forth, or any part thereof, and this defendant does disclaim all right, title and interest to the said estate and premises in said complainant's amended bill in equity mentioned, and every part thereof; and this defendant denies all unlawful combination, agreement, conspiracy and confederacy in the said amended bill in equity charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, [120] all which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be hence dismissed with his reason-

able costs and charges in this behalf most wrongfully sustained.

WILLIAM DWYER,
Defendant.

GEO. W. TANNAHILL,
Solicitor for Defendant, Residing at Lewiston,
Idaho.

State of Idaho,
County of Nez Perce,—ss.

William Dwyer, being duly sworn, says:

That he has read the foregoing disclaimer, subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information or belief, and as to those matters that he believes it to be true.

WILLIAM DWYER.

Subscribed and sworn to before me this 31 day of
December, 1909.

SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: Filed January 5, 1910. A. L. Richardson, Clerk. [121]

*In the Circuit Court of the United States, for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, WILLIAM DWYER, CLARENCE
ROBNETT, FRANK W. KETTENBACH,
Defendants.

**Answer [of Messrs. Kettenbach, Kester and Dwyer]
to Amended Bill.**

ANSWER TO AMENDED BILL IN EQUITY.

To the Honorable, the Judges of the Circuit Court
of the United States, for the District of Idaho:

The joint and several answers of the defendants,
William F. Kettenbach, George H. Kester and Will-
iam Dwyer to the amended bill in equity of the
United States of America, complainant respectfully
shows:

That these defendants now and at all times here-
after saving and reserving to themselves all man-
ner of benefit and advantage of exception to the
many errors and insufficiencies in the complainant's
said amended bill in equity contained, for answer
thereto or to so much or such parts thereof as these
defendants are advised is material for them to
make answer unto, they answer and say:

1.

These answering defendants deny that heretofore,

to wit: On the first day of July, in the year 1902, or upon any other date, or at all, or at divers other times before or after that day, or before the making of the several entries hereinafter or in complainant's amended [122] bill in equity mentioned or designated, in the State of Idaho, or at all, William F. Kettenbach, George H. Kester, William Dwyer, Clarence Robnett or Frank W. Kettenbach, or either thereof, hereinbefore or in the caption of complainant's amended bill in equity named as defendants, or by the original bill filed in this cause, or by process duly issued and served therein, made parties defendant, did unlawfully and corruptly combine, conspire, confederate or agree together or with each other or with divers other persons, some of whom are hereinafter named or in complainant's amended bill in equity named, or others who are to the complainant unknown, or did form, make or enter into an unlawful, corrupt or fraudulent conspiracy, combination or agreement with each other, or the other persons aforesaid, for the purpose or to the end of defrauding the complainant of the title or ownership of divers large tracts of public land then owned by the complainant or lying in the district of public lands subject to entry at the land office of the United States located at Lewiston, in the State of Idaho, or for the purpose or to the end of defrauding the complainant out of the use, occupation or possession of the said tracts of public land, or for the purpose or to the end of acquiring by or for the said defendants, or by or for each of them, the title to larger areas of such public lands than could be, under or

in accordance with the laws of the United States providing for or regulating the disposal of such public lands, lawfully acquired by the said defendants, collectively or individually, or for the purpose of accomplishing the said ends or of so defrauding the said complainant by divers [123] fraudulent or unlawful means, that is to say, by means of false, fraudulent or unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, or by means of perjury, the subornation of perjury, the procurement of false swearing, or by means of other falsehoods, false pretenses or misrepresentations, whereby the officers of the United States should be deceived or imposed upon, or should be induced or procured to divest the United States of its title to the said lands or to convey the said title of the United States to divers persons not lawfully entitled thereto, contrary to the laws of the United States, or for the benefit, advantage or profit of the said defendants, or either thereof.

2.

These answering defendants, and each thereof, deny that as a part of the said conspiracy or agreement so far as aforesaid made or entered into by the said defendants, or as a part of the said unlawful or fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times or the place aforesaid by the said defendants, mutually agreed, designed or contemplated that they, the said defendants, should persuade, employ or otherwise induce or procure a large number of other persons severally to purchase

or to make entries of divers tracts of the public lands aforesaid under or in pretended or apparent accordance with the aforesaid act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892, or upon any other [124] date, or that before the said other persons should apply to enter or purchase such lands or should take any steps or initiate any proceedings to that end, or before the making of such entries or purchases, or as a means of persuading or inducing the said other persons to make such entries or purchases, the said defendants should make or enter into certain agreements, contracts or understandings with the said other persons, severally, whereby or by the terms of which agreements, contracts or understandings, the said defendants or some of them, should agree or contract to buy of the said other persons, severally, or the said other persons severally should agree or contract to sell to the said defendants, or to some of them, the respective tracts so to be entered or purchased by the said other persons when or so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered or purchased, or shortly thereafter; or that, thereupon or after the making of such unlawful contracts or agreements or while the same should subsist or continue, the said defendants should cause or procure the said other persons severally to apply at the land office aforesaid to make entries of or to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, or should cause or

procure each of the said persons so applying, at the time of making his application to enter, or in connection with or as a part of such application, to execute, sign, make oaths to or file in the said land office a sworn statement of the character, substance, tenor or purport [125] described by the said Act of Congress, approved on June 3, 1878, in which statement such applicant should declare or on his oath represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use or benefit, or that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing, or contemplating that each of the said other persons so to be induced to make such applications or to file such sworn statements should in doing so commit or be guilty of wilful or corrupt perjury or should swear falsely or corruptly or should defraud the United States, or fraudulently deceive or impose upon the officers of the said land office or upon other officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch or because in truth or in fact each of the said persons so to be induced to make such applications should, before the making of his said application or the filing of his said sworn state-

ment, as the said defendants intended or contemplated, have made with the said defendants or some of them, the agreement or contract aforesaid, by the terms of which such persons so to make application agreed to sell to the defendants or to some of them, or the defendants or some of them agreed to buy, the land or [126] the title which such person should acquire from the United States by means of the application or entry by him to be made.

3.

These answering defendants, and each thereof, deny that thereafter, or at all, or, that is to say, after the formation or making of the said unlawful conspiracy or agreement so as aforesaid made or entered into by the said defendants, or at divers times in the State of Idaho, in pursuance or execution of the said conspiracy, or for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make or enter into fraudulent, corrupt, or unlawful contracts, agreements, arrangements or understandings with a large number of persons, severally, that is to say, with Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsell H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell or Benjamin F. Long, or either thereof, severally, or with divers other persons who are to the complainant now unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to its

bill by proper amendment and to seek appropriate relief in respect of the lands alleged to have been by them fraudulently obtained from the complainant; or that in or by the said unlawful contracts, agreements, arrangements or understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally [127] agreed or arranged with the said defendants, or with some of them, that he or she would make an entry or purchase of a tract of the public land of the United States under or in pretended or apparent accordance with the aforesaid Act of Congress, approved on June 3, 1878, as amended on August 4, 1892, or at all, or would, upon obtaining title to the said tract from the United States, convey the said title or tract to the defendants or to some of them; or the said defendants, or some of them, acting for all, agreed, contracted or arranged that they would pay to each of the said other persons a certain sum of money for the tract of land by him or her so to be entered or by way of recompense to such person for his or her costs, labor or trouble incurred in acquiring title to the said tract from the United States, or the said defendants further agreed or promised to furnish or advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land or to defray the other expenses incident to the obtaining of title to such land from the United States, or at all.

4.

These defendants, and each thereof, deny that at the divers or several times hereinbefore or in com-

plainant's amended bill in equity referred to, the said Carrie D. Maris, or the other persons hereinbefore or in complainant's amended bill in equity named or stated to have made or entered into certain unlawful, corrupt or illegal agreements, arrangements or understandings with the said defendants, severally did apply to enter or did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office, or [128] each of the said persons did consequently or in the usual course of administration of the public laws obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, or that is to say, that the said Carrie D. Maris did make entry of or obtain a patent conveying to her the southeast quarter of the southwest quarter of section 12, or the east half of the northwest quarter or the northeast quarter of the southwest quarter of section 13, in township 36, north of range 5, *each* of the Boise meridian, but admit that the said Carrie D. Maris did obtain a patent to the said tract of land, and admit that the said John H. Little did obtain a patent to the land described in paragraph nine of complainant's amended bill in equity, and admit that Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Benjamin F. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar H. Taylor, Joseph H. Prentice, Fred E. Justice and Edgar H. Dammarell, did obtain patents to the tracts of land set out and specifically described

in paragraph nine of complainant's amended bill in equity, except that these defendants deny that the said Benjamin F. Long did on June 18, 1903, or at any other time, make entry of, or on August 3, 1904, did obtain a patent conveying to him the south half of the northwest quarter and the south half of the northeast quarter of section 18, in township 33 N., R. 3 E., B. M., and deny that Edgar H. Dammarell did on July 25, 1904, make entry of, or on December 31, 1904, obtained a patent conveying to him the northeast quarter [129] of section 10, in Township 38 N., R. 6 E., B. M.; and these defendants deny that any agreement, contract or understanding was ever made or entered into with either of said entrymen for the purchase of the said tracts of land or the acquiring of title thereto by these defendants, or either thereof, prior to the time the said sworn statements were filed, or the applications to enter the said tracts were made, or the making of final proof thereof.

5.

These defendants, and each thereof, deny that each of the said persons so making entry of or obtaining title to the tract by him or her entered did apply to make or did make such entry, or did prosecute or carry on the proceedings, at the solicitation or instigation of the said defendants, being moved or stimulated thereto by the advice, request or promises of the said defendants, or therein acting upon, in pursuance of, or in accordance with the unlawful, corrupt or fraudulent agreement, arrangement or understanding theretofore made or entered into as

aforesaid between him or her or the said defendants, which said agreement, arrangement or understanding continued or subsisted throughout the whole of the said proceedings, whereby it had been or was agreed that the said defendants should buy from each of the said persons, or each of the said persons should sell or convey to the said defendants, the tract or the title by him or her to be acquired from the United States.

6.

These defendants, and each thereof, deny that each of the persons named in paragraph nine or ten of complainant's amended bill in equity, or stated to have [130] made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, or as a part of the said application, or as a necessary or material step in the proceedings to obtain a patent for the land by him or her sought to be entered, did file in the said land office a written statement, of the character, substance, tenor or purport prescribed by the Act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently, or deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use or benefit, or that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in

whole or in part to the benefit of any person except himself or herself, or whereas in truth or in fact each of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, or not for his or her own exclusive use or benefit, or had made an unlawful or fraudulent agreement with the said defendants, as aforesaid, whereby the title by him or her to be acquired should inure to the use or benefit of the said defendants; or the said statements so made by the said persons or each of them were known by the said persons, or by each of them, or were known by the said defendants, to be false, untrue, fraudulent or deceitful. [131]

7.

These defendants, and each thereof, deny that by reason of the facts in complainant's amended bill in equity stated, or by reason of the unlawful conspiracy among the said defendants, the unlawful agreements between the said defendants or the said other persons who made the entries herein enumerated or designated, the perjury procured by the said defendants or committed by the said other persons in the procurement of the said entries, or the false swearing, misrepresentations or concealment of material facts committed or practiced by the said persons, or of the other matters which are in complainant's amended bill in equity set out, the said entries, or each of them, were unlawfully made, or were or are illegal, fraudulent, or invalid, or that the United States was or is defrauded thereby, or that, by reason of the said facts, the officers of the United States, charged with the administration of the laws provid-

ing for or governing the disposal of the public lands, or concerned in the transactions herein or in complainant's amended bill in equity stated, were deceived, defrauded, misled or imposed upon, or caused to allow the said entries to be made, or induced to approve the said entries or to issue patents thereon; or that the said patents, by reason of the said facts are invalid, or are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation or imposition, or in violation of law, or as having been issued or granted under fraudulent imposition or mistake of fact, or in fraud of the United States, or at all. [132]

8.

These defendants, and each thereof, deny that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or either thereof, by their aforesaid several unlawful, corrupt or fraudulent schemes or practices, or by or through the various persons in complainant's amended bill in equity mentioned as employed by them for that purpose, fraudulently obtained or procured the patents of complainant to be issued to the various persons in complainant's amended bill in equity mentioned in connection with the several descriptions of said lands mentioned and set out, or as complainant further avers or charges that the said pretended patents to the lands described in complainant's amended bill in equity, were procured, as the defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or

either, or each of them, well knew at the time of procuring the same, in violation of the laws of the United States; or as complainant further avers or charges that in the case of each or every of such tracts of land in complainant's amended bill in equity described, the acts or conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, or either or each of them, or each or every of their employees or confederates, were illegal or fraudulent, or that the patents procured from this complainant by or on behalf of said defendants, were or are, in each or every instance, fraudulent, invalid or voidable as against the complainant, or contrary to equity or good conscience, or being so, or the titles purporting to be conveyed thereby being vested in certain [133] of the said defendants, the said patents ought to be vacated, set aside, avoided or for naught held, or at all.

9.

These defendants, and each thereof, deny that the or any patents were so unlawfully or fraudulently procured from complainant by or on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or either thereof, for the several tracts of land in complainant's amended bill in equity mentioned or described, but admit that all of said patents were issued by the complainant in each and every instance within six years of the filing of the complainant's amended bill in equity, on file herein.

10.

These defendants and each thereof deny that pursuant to the said unlawful or corrupt combination, conspiracy or agreement, alleged and set forth in complainant's amended bill in equity, or to effect the object or purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank Kettenbach, or either thereof, did induce the said several other persons named in complainant's amended bill in equity in connection with the description of the several tracts of land, to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach, by the name of W. F. Kettenbach, or in some instances to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Kettenbach, or Kester and Kettenbach, or in some instances to Clarence W. Robnett, by the name of C. W. Robnett; or that in each or every instance such [134] conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, or either or all of them, or other person or persons unknown to complainant, pursuant to the unlawful agreement alleged or set forth in complainant's amended bill in equity; or that, by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States or conveyed to the said patentees, are now vested in certain of the said defendants, but admit that George H. Kester and William F. Ketten-

bach, at various times, purchased the said tracts of land, having purchased some thereof from the entrymen themselves, and purchased a few thereof from Clarence W. Robnett, and some thereof from other persons, the transferees of the entrymen, but deny that the said purchases were made pursuant to any conspiracy, agreement, combination or understanding prior to the filing of the sworn statement or the making of final proof for the said tracts by the various entrymen.

11.

Deny that the said complainant has been cheated or defrauded out of its public lands, or is remediless at or by the strict rules of the common law, or is only relievable in a court of equity wherein such matters are fully cognizable or reviewable, and deny that the defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, should be required to make full, true, direct or certain answers, according to the best of their knowledge, information or belief, to all and singular the matters or [135] charges aforesaid.

SECOND.

For a further, separate and second defense, these answering defendants allege:

1.

That at the time the said several entrymen obtained title to the tracts of land set out and specifically described in paragraph nine of complainant's amended bill in equity, the said entrymen, John H. Little, Ellsworth M. Harrington, Wren Pierce, Ben-

jamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Benjamin F. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice and Edgar H. Dammarell, were citizens of the United States and qualified to make entry and acquire title under the timber and stone laws of the United States to one hundred sixty acres of land, and to the land set out and specifically described in said paragraph nine of complainant's amended bill in equity, and did upon the dates and at the times referred to in said paragraph nine acquire title to the various tracts of land set out and specifically described therein, except that he said Benjamin F. Long acquired no title to any lands in section 13, township 37 N., R. 3 E., B. M., and the said Edgar H. Dammarell acquired no title to lands in section 10, township 38 N., R. 6 E., B. M.

2.

That the said several entrymen did, on or about the time alleged in paragraph nine of complainant's amended [136] bill in equity, file their sworn statements in compliance with the provisions of the timber and stone laws of the United States, and in good faith acquired title to the several tracts of land set out and specifically described in paragraph nine of complainant's amended bill in equity, and a patent thereto was duly issued to said entrymen.

3.

That subsequent thereto, and in due course of business, George H. Kester and William F. Kettenbach purchased the said tracts of land, a portion thereof

having been purchased from the individual entrymen by William F. Kettenbach, and a portion thereof having been purchased by the defendants George H. Kester and William F. Kettenbach, and conveyances were duly and regularly issued therefor, and after title had been acquired by the said entrymen, the said conveyances were made to the said George H. Kester and William F. Kettenbach, as follows:

CARRIE D. MARIS.

The said Carrie D. Maris, prior to the 21st day of November, 1902, filed her sworn statement and thereafter acquired title to the southeast quarter of the southwest quarter of section 12, and the east half of the northwest quarter and the northeast quarter of the southwest quarter of section 13, Township 36 N., R. 5 E., B. M., and paid the purchase price therefor, and thereafter on the 2d day of June, 1903, sold and transferred the said land to Clarence W. Robnett, and the defendants, William F. Kettenbach and George H. Kester, did thereafter, on July 12, 1906, purchase the same from the said Clarence W. Robnett, and the said Clarence W. Robnett, joined therein by his wife, Jennie M. Robnett, by warranty deed [137] of conveyance, for value, transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same; that the defendants, or either thereof, had no contract or understanding or agreement of any kind or nature with the said Clarence W. Robnett or with the said Carrie D. Maris for the purchase of said tract of land prior to the filing of the said sworn statement of the said Carrie D. Maris

therefor, or prior to her acquiring title to the said tract of land.

JOHN H. LITTLE.

The said John H. Little, prior to June 15th, 1903, filed his sworn statement and thereafter acquired title to lot 1 and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, Township 39 N., R. 3 E., B. M., and thereafter, and on the 24th day of October, 1904, the said John H. Little, joined therein by his wife, Edna Fife Little, sold and transferred the said land by warranty deed of conveyance, for value, to the defendant, William F. Kettenbach, who now holds the legal title to the said tract of land, and that the said purchase was made in good faith, without any understanding or agreement of any kind or nature made with the said John H. Little prior to the time the said John H. Little filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

ELLSWORTH M. HARRINGTON.

That the said Ellsworth M. Harrington, prior to June 15, 1903, filed his sworn statement and thereafter acquired title to lot 1 and the northwest quarter of the [138] northeast quarter and the north half of the northwest quarter of Section 24, Township 39 N., R. 3 E., B. M., in Idaho, containing 164 acres, and thereafter, on the 18th day of May, 1906, the said Ellsworth H. Harrington, joined therein by his wife, Anna E. Harrington, sold and transferred the said land for value to the defendant, William F. Kettenbach, who now holds the legal title to the same; that

the said William F. Kettenbach had no contract, understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Ellsworth M. Harrington filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

WREN PIERCE.

That prior to the 17 day of June, 1903, the said Wren Pierce filed his sworn statement and thereafter acquired title to the southeast quarter of section 22, township 39 N., R. 3 E., B. M., and thereafter and in due course of business, and on May 31st, 1904, for value, sold and transferred the same to the defendant, William F. Kettenbach, who now holds the legal title thereto, and that the said William F. Kettenbach, or none of the defendants, had any contract or understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Wren Pierce filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

BENJAMIN F. BASHOR.

That prior to the 17th day of June, 1903, the said Benjamin F. Bashor filed his sworn statement and thereafter acquired title to lot 4, and the southwest [139] quarter of the southeast quarter, and the south half of the southwest quarter of section 24, township 39 N., R. 3 E., B. M., and thereafter and in due course of business, on April 12, 1906, for value, the said Benjamin F. Bashor, joined therein by his wife, Emma C. Bashor, sold and transferred the said

land to the defendant, William F. Kettenbach, who now holds the legal title to the same, and the said defendant, William F. Kettenbach, nor any of the defendants herein, had any understanding, contract or agreement with the said Benjamin F. Bashor for the purchase of said tract of land prior to the time the said Benjamin F. Bashor filed his sworn statement and made application to purchase the same, or prior to the time the said Benjamin F. Bashor acquired title thereto.

JOSEPH B. CLUTE.

That prior to June 17th, 1903, the said Joseph B. Clute filed his sworn statement and thereafter acquired title to the south half of the northeast quarter and the east half of the southeast quarter of section twenty-six in township thirty-nine North, of Range 3 E., B. M., and thereafter, in due course of business, on June 17th, 1903, for value, sold and transferred the same to the defendants, William F. Kettenbach and George H. Kester; that neither the said William F. Kettenbach nor the said George H. Kester, or any of the defendants herein, had any contract or understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Joseph B. Clute filed his sworn statement or prior to the time the said Joseph B. Clute acquired title thereto; that the said William F. Kettenbach, nor George H. Kester, nor either thereof now hold the legal title to the said tract of land, nor did they hold the legal title to the same at the [140] time of the institution of this action, or the filing of the original bill in equity of the complainant herein,

or at the time of the filing of the *lis pendens* in this action.

FRANCIS M. LONG.

That the said Francis M. Long, prior to June 18, 1903, filed his sworn statement and thereafter acquired title to the north half of the southwest quarter and north half of the southeast quarter of section 13, township 39 North, of Range 3 E., B. M., and thereafter, and after the said Francis M. Long had acquired title to said tract of land, with his wife, Annie E. Long, on August 9, 1904, for value, by warranty deed of conveyance, sold and transferred the said tract of land to William F. Kettenbach, and the legal title to the same now stands of record in the said William F. Kettenbach; that the said William F. Kettenbach had no contract, understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Francis M. Long filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

JOHN H. LONG.

That the said John H. Long, prior to June 18, 1903, filed his sworn statement and application to purchase under the timber and stone laws of the United States, lot 2 and the southwest quarter of the northeast quarter and the south half of the northwest quarter of section 24, township 39 N., R. 3 E., B. M., containing 156.14 acres, and thereafter [141] acquired title to the same, and after having acquired title to said tract of land, to wit: On July 21, 1904, the said John H. Long, by his warranty deed of conveyance,

for value, and in due course of business, sold and transferred the said tract of land to William F. Kettenbach, who now holds the legal title to the same, and none of the defendants herein had any contract, understanding or agreement with the said John H. Long, either directly or indirectly, for the purchase of said tract of land prior to the filing of his sworn statement therefor, or prior to the said John H. Long acquiring title to the same.

BENJAMIN F. LONG.

That the said Benjamin F. Long, prior to June 18, 1903, filed his sworn statement and made entry under the timber and stone laws of the United States for the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 N., R. 3 E., B. M., containing 160 acres, and after acquiring title to said tract of land, the said Benjamin F. Long, by warranty deed of conveyance, on July 25, 1904, sold and transferred the said tract of land, for value, and in due course of business, to the defendant, William F. Kettenbach, who now holds the legal title to the same, and that the said William F. Kettenbach, nor any of the defendants herein, had any contract, agreement or understanding in any way with the said Benjamin F. Long for the purchase of said tract of land prior to the said Benjamin F. Long filing his sworn statement and acquiring title to the said tract of land. [142]

BERTSEL H. FERRIS.

That the said Bertsel H. Ferris, prior to June 26, 1903, filed his sworn statement and made entry under the timber and stone laws of the United States of

lot 3 and the northwest quarter of the southeast quarter and the north half of the southwest quarter of section 24, township 39 N., R. 3 E., B. M., containing 148.10 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on the 16th day of January, 1907, the said Bertsel H. Ferris, joined therein by his wife, Mabel Ferris, for value, duly sold and transferred said tract of land to the defendant, William F. Kettenbach, who now holds the legal title to the same, and that neither the said William F. Kettenbach, nor any of the defendants herein, had any contract, agreement or understanding with the said Bertsel H. Ferris for the purchase of said tract of land prior to the said Bertsel H. Ferris filing his sworn statement and application to purchase the same, and prior to his acquiring title thereto.

GEORGE RAY ROBINSON.

That the said George Ray Robinson, prior to June 26, 1903, filed his sworn statement and application to purchase under the timber and stone laws of the United States, the north half of the northwest quarter and the north half of the northeast quarter of section 26, township 39 N., R. 3 E., B. M., containing 160 acres, and thereafter acquired title thereto, and after acquiring title to the same, by his warranty deed of conveyance, on the 16th day of October, 1905, for value, and in due course of business, sold and transferred the said tract of land [143] to the defendant, William F. Kettenbach, who now holds the legal title to the same, and the said defendant, William F.

Kettenbach, nor any of the defendants herein, had any contract or agreement, either directly or indirectly, or any understanding with the said George Ray Robinson for the purchase of the said tract prior to the filing of his sworn statement, or prior to his acquiring title thereto.

CHARLES W. TAYLOR.

That the said Charles W. Taylor, prior to the 11th day of July, 1904, filed his sworn statement and application to purchase under the timber and stone laws of the United States, lots 1, 2, and east half of northwest quarter of section 30, township 38 N., R. 6 E., B. M., containing 157.80 acres, and thereafter acquired title to the same, and after having acquired title to the said tract of land, by his warranty deed of conveyance, on the 12th day of July, 1904, for value, duly sold and transferred to the defendants William F. Kettenbach and George H. Kester said tract of land, who now hold the legal title thereto, and that neither the said defendants, William F. Kettenbach nor George H. Kester, nor any of the defendants herein, had any contract or agreement with the said Charles W. Taylor prior to the filing of his sworn statement or prior to the acquiring of title to the said tract of land, for the purchase of the same, either directly or indirectly.

JACKSON O'KEEFE.

That the said Jackson O'Keefe, prior to the 11th day of July, 1904, filed his sworn statement and application for the purchase, under the timber and stone laws of the [144] United States, of the east

half of the southwest quarter, and the west half of the southeast quarter of section 23, township 38 N., R. 5 E., B. M., and thereafter acquired title to the same, and after having acquired title to said tract of land, by his warranty deed of conveyance, for value, and in due course of business, duly sold and transferred the same to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title thereto, and the said defendants, nor either thereof, had any contract, or agreement, or understanding of any kind or nature, for the purchase of said tract of land prior to the filing of the sworn statement of the said Jackson O'Keefe therefor, or prior to his acquiring title to the same.

JOSEPH H. PRENTICE.

That the said Joseph H. Prentice, prior to the 11th day of July, 1904, filed his sworn statement and application under the timber and stone laws of the United States, for the purchase of lots 1 and 2 and the east half of the northwest quarter of section 18, township 38 N., R. 6 E., B. M., containing 156.60 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by warranty deed of conveyance, the said Joseph H. Prentice, joined therein by his wife, Emma A. Prentice, on the 25th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to Jackson O'Keefe, who thereafter, and in due course of business and for value, on July 30th, 1904, by his warranty deed of conveyance sold and transferred the said tract of land to [145] the defendants, William F. Kettenbach and George H.

Kester, who now hold the legal title to the same; that the defendants, or neither thereof, had no contract or understanding or agreement of any kind or nature with the said Jackson O'Keefe, or with the said Joseph H. Prentice, for the purchase of said tract of land prior to the filing of the said sworn statement of the said Joseph H. Prentice therefor, or prior to his acquiring title to said tract of land.

FRED E. JUSTICE.

That the said Fred E. Justice, prior to the 13th day of July, 1904, filed his sworn statement and application to purchase under the timber and stone laws of the United States, the east half of the northeast quarter and the east half of the southeast quarter, section 20, township 38 N., R. 6 E., B. M., and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on the 13th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same, and that the said defendants, nor either thereof, had any contract, understanding or agreement with the said Fred E. Justice for the said tract of land prior to the filing of his sworn statement therefor, or prior to his acquiring title to the same.

EDGAR H. DAMMARELL.

That the said Edgar H. Dammarell, prior to July 25, 1904, filed his sworn statement and application [146] to purchase under the timber and stone laws of the United States, the northeast quarter of section 19, township 38 N., R. 6 E., B. M., containing 160

acres, and thereafter acquired title thereto, and after acquiring title to said tract of land, by his warranty deed of conveyance, joined therein by his wife, Nellie M. Dammarell, on the 26th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to Jackson O'Keefe, and thereafter, on July 30th, 1904, the said Jackson O'Keefe, for value and in due course of business, by his warranty deed of conveyance, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same, and that the defendants, nor either thereof, had any contract, understanding or agreement with the said Edgar H. Dammarell or the said Jackson O'Keefe, or either thereof, for the purchase of the said tract of land, prior to the filing of the sworn statement of the said Edgar H. Dammarell, or prior to his acquiring title thereto.

EDGAR J. TAYLOR.

That prior to July 11, 1904, the said Edgar J. Taylor filed his sworn statement and application to purchase under the timber and stone laws of the United States, lots 3, 4, and the east half of the southwest quarter of Section 18, Township 38 N., R. 6 E., B. M., containing 157 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on July 12, 1904, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title [147] to the same, and the said defendants,

nor either thereof, had any contract, understanding, or agreement with the said Edgar J. Taylor, either directly or indirectly, for the purchase of said tract of land, prior to the filing of his sworn statement and application to purchase the same, and prior to his acquiring title thereto.

4.

That the said defendant, William Dwyer, has and never did have any interest in or to the said tracts of land, of any kind or nature, and the said William Dwyer enters a disclaimer of any part or portion of said tracts of land, or either thereof.

THIRD.

For a further, separate and third defense, these defendants, and each thereof, allege:

1.

That the perjury, subornation of perjury and conspiracy alleged and pleaded in complainant's amended bill in equity, are barred by the provisions of Sections 1043 and 1044, Revised Statutes of the United States of America.

2.

These defendants deny all unlawful combination, confederacy and conspiracy in said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or [148] belief of these defendants, all which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly

pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM F. KETTENBACH,
GEO. H. KESTER,
WILLIAM DWYER,

Defendants.

GEO. W. TANNAHILL,
Solicitor for Defendants, Residing at Lewiston,
Idaho. [149]

State of Idaho,
County of Nez Perce,—ss.

William F. Kettenbach, George H. Kester, and
William Dwyer, being duly sworn, depose and say:

That they have read the foregoing answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to matters which are therein stated to be upon their information or belief, and as to those matters that they believe it to be true.

WILLIAM F. KETTENBACH.
GEORGE H. KESTER.
WILLIAM DWYER.

Subscribed and sworn to before me this 31st day
of December, 1909.

SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: Filed January 5, 1910. A. L.
Richardson, Clerk. [150]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE ROBNETT, FRANK W. KETTEN-
BACH,

Defendants.

**Replication to Answer [of Messrs. Kettenbach,
Kester and Dwyer].**

Replication of complainant, in the above-entitled cause, to the answer of defendants William F. Kettenbach, George H. Kester, and William Dwyer, to the complainant's amended bill of complaint.

This replicant, saving and reserving to itself all advantage of exception to the manifold insufficiencies, errors and uncertainties of the answer of the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, for replication thereto, says: That it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendants, William F. Kettenbach, George F. Kester and William Dwyer is untrue, evasive and insufficient; wherefore, it prays relief as in its said amended bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [151]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE ROBNETT, FRANK W. KETTEN-
BACH,
Defendants.

**Replication to Answer and Disclaimer [of William
Dwyer].**

Replication of complainant, in the above-entitled cause, to the answer and disclaimer of William Dwyer, defendant.

This replicant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer and disclaimer of the said defendant, William Dwyer, for replication thereto, saith: That it will ever aver, maintain and prove its said bill to be true and sufficient in law, and that said answer and disclaimer is untrue and insufficient; wherefore, replicant prays relief as in said amended bill of complaint set forth.

PEYTON GORDON,
Special Assistant to the Attorney General,
Solicitor for Complainant.

[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [152]

**[Praecipe for Entry of Appearance of C. W. Robnett
in Case No. 388.]**

Spokane, Wash., April 7th, 1910.

A. L. Richardson,
Clerk of U. S. Court,
Boise, Idaho.

Dear Sir:

Please enter my general appearance in the following cause:

Equity—No. 388.

UNITED STATES

vs.

WM. F. KETTENBACH et al.

Yours,

C. W. ROBNETT,
Defendant.

[Endorsed]: Filed April 16, 1910. A. L. Richardson, Clerk. [153]

**[Application of Messrs. Kettenbach, Kester and
Dwyer to File Fourth Defense and Plea in Bar
to Amended Bill.]**

*In the Circuit Court of the United States within
and for the District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KES-

TER, and WILLIAM DWYER, CLARENCE W. ROBNETT, and FRANK W. KETTENBACH,

Defendants.

APPLICATION TO FILE FOURTH DEFENSE
AND PLEA IN BAR TO COMPLAINANT'S
AMENDED BILL IN EQUITY ON FILE
HEREIN.

Come now the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer, and present their fourth defense and plea in bar, and ask that they be permitted to file the same on the grounds and for the following reasons:

1.

That the said fourth defense and plea in bar is material, relevant and competent and a proper defense to be interposed and pleaded to the complainant's amended bill in equity on file herein.

2.

That the issues raised by the said fourth defense and plea in bar cannot be tried or determined unless the same are affirmatively pleaded.

This application is made and based on the complainant's amended bill in equity on file herein, the defendants' fourth defense and plea in bar herewith presented for filing and all the files and records in the above-entitled cause.

GEO. W. TANNAHILL,
Solicitor for Defendants, Residing at Lewiston,
Idaho.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath

says that he is the solicitor for the defendants above named, that the foregoing application is made in good faith, and not for purpose of delay and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL. [154]

Subscribed and sworn to before me this 5th day of May, A. D. 1910.

[N. P. Seal]

GEO. E. ERB,

Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed May 9, 1910. A. L. Richardson, Clerk. [155]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE ROBNETT, FRANK W. KETTEN-
BACH,

Defendants.

**Fourth Defense and Plea in Bar [of Messrs.
Kettenbach, Kester and Dwyer].**

To the Honorable the Judges of the Circuit Court
of the United States, for the District of Idaho:

Come now the defendants William F. Kettenbach,
George H. Kester and William Dwyer, by leave of
court first had and obtained, and file this their fur-
ther, separate and fourth defense and plea in bar to

complainant's amended bill in equity on file herein, and respectfully represent to this Court as follows:

1.

That each and all of the conveyances made by the various entrymen to the defendants herein have been conveyed by warranty deeds or by instruments in writing, by which their title to the said tracts of land was warranted, and the defendants conveying the same to the various transferees are liable on their warranties in case the title fails, and by reason thereof, in addition to their equity of redemption in the lands held by Idaho [156] Trust Company, the defendants herein have an interest in all of the land in controversy which has been conveyed by them by reason of their warranty contained in the deeds, and conveyances made, executed and placed of record, and delivered to the various purchasers.

2.

That heretofore, on the 13th day of July, A. D. 1905, in the United States District Court within and for the Central Division, District of Idaho, in the case of The United States of America vs. Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, a Grand Jury, then in session, returned an indictment against these defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging conspiracy to defraud the United States in violation of section 5440, R. S. U. S., in which indictment, and in Count One thereof, the charges against these defendants are in substance, as follows:

“That heretofore, to wit: On the 25th day of April, 1904, at the place aforesaid, Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach, and other persons to the Grand Jury unknown, did falsely, unlawfully and wickedly conspire, combine, confederate and agree together among themselves to defraud the United States of the title and possession of large tracts of land situated in the County of Shoshone, and State and District of Idaho, and of great value, of which the following described land is a part, viz.: All that tract or parcel of land described as follows, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight, North of Range Six, East of Boise Meridian, in the County of Shoshone, and State and District of Idaho, by means of false, fraudulent, untrue and illegal entries of said lands under the laws of the United States, the said lands being then and there public lands of the United States open to entry and sale under said laws of the United States at the local land office of the United States at said city of Lewiston in said State and District of Idaho. That according to and in pursuance [157]..of said conspiracy, combination, confederation and agreement among themselves had as aforesaid, and to effect the object of said conspiracy, the said Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach did on said 25th day of April, 1904, at the City of Lew-

iston in the County of Nez Perce, in the State and District of Idaho, and within the jurisdiction of this court, fraudulently, unlawfully and corruptly persuade and induce one Charles W. Taylor of said District then and there being, to take his corporal oath and be then and there sworn before one J. B. West, who was then and there the duly appointed, qualified and acting Register of the United States Land Office at said City of Lewiston, in said Lewiston Land District, and who was then and there an officer and person having due and competent authority to administer said oath and who did then and there administer said oath to the said Charles W. Taylor. That a certain written affidavit and statement by him, the said Charles W. Taylor, then and there made, sworn to and subscribed, was true, which said written affidavit and statement then and there subscribed and sworn to by him, the said Charles W. Taylor, at the request and by the procurement of them, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, as aforesaid, was then and there in a case in which a law of the United States authorized an oath to be administered and that said written affidavit and statement was then and there required of him, the said Charles W. Taylor, by law, and the rules and regulations of the Interior Department and the General Land Office of the United States, which said written affidavit and statement was then and

there that certain written application to the Register of the United States Land Office, at said City of Lewiston, duly made and filed by him, the said Charles W. Taylor, in the United States Land Office at said City of Lewiston, on the 25th day of April, 1904, whereby he, the said Charles W. Taylor, duly applied to the said Register of the said United States Land Office at said City of Lewiston, to enter and purchase under that certain Act of Congress approved June 3, 1878, entitled

“ ‘An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory,’ amended by that certain Act of Congress approved August 4, 1893, entitled: ‘An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws,’ the land hereinbefore described, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight North of Range Six, East of Boise Meridian, situate within the District of lands subject to entry and sale under the public land laws of the United States, at the said United States Land Office at Lewiston, Idaho, and which written affidavit and statement sworn to as aforesaid, he, the said Charles W. Taylor, and the said Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach, [158] and each of them, did then and there know to be false, fraudulent and untrue. * * *

Which indictment was and is numbered 605, and which indictment was then and there on the said 13th day of July, 1905, duly and regularly filed in the above-entitled court and now remains of record therein, and which indictment contains Count One, involving the entry of Charles W. Taylor and the land hereinbefore described, and Count Two thereof contains the same allegations as appear in Count One and hereinbefore pleaded, involving the entry of Edgar H. Dammarell, embracing the northwest quarter of section 19, township 38 north of range 6 E., B. M. Count Three thereof contains the same allegations as appear in Count One and involves the entry of Edgar J. Taylor, embracing Lots 3 and 4, and the east half of the southwest quarter of section 18, township 38 north of range 6 E., B. M. The Fourth Count thereof involves the entry of Joseph H. Prentice, and embraces lots 1 and 2 and the east half of the northwest quarter of section 18, township 38 north of range 6 E., B. M., and which count contains the same allegations as are contained in Count One hereof.

3.

INDICTMENT NO. 607.

That heretofore, on the 13th day of July, A. D. 1905, in the District Court of the United States, within and for the Central Division of the District of Idaho, a Grand Jury duly sworn and empaneled, returned an indictment against the defendants, William Dwyer, George H. Kester and William F. Kettenbach, charging the said defendants with conspiracy to defraud the United States in violation of

section 5440, R. S. U. S., consisting of [159] Counts One, Two, and Three, which said indictment is No. 607, returned by the Grand Jury and filed by the Clerk of the above-entitled court on the said 13th day of July, 1905, and now appears on file therein, and which indictment is here referred to and made a part hereof as fully as if here set out.

That in Count One of said indictment there appears substantially the same allegation as to conspiracy, fraud, perjury and subornation of perjury as appears in the first count of Indictment No. 605, hereinbefore pleaded, set out and referred to, with the exception that the name of the entryman is Rowland A. Lambdin, and the land involved is described as southwest quarter of section 29, township 42 north of range 1 west of Boise meridian, with other land.

That in Count Two of said indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is Fred W. Shaeffer, and the land is described as the east half of the northwest quarter and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section twenty-seven, township 40 north of range 1 west of the Boise meridian, with other land.

That in Count Three of said Indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is given as Ivan R. Cornell, and the land involved is described as lots 6 and 7 and the east half of the southwest quarter of section

twenty-seven, township 40 north of range 1 west of Boise [160] meridian, with other lands.

4.

INDICTMENT NO. 615.

That in the District Court of the United States, within and for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly sworn and empaneled, returned an indictment against the defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging these defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which indictment is numbered 615, returned by the Grand Jury and filed by the clerk of the above-entitled court November 6, 1905, and now remains on file therein, which said indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains five counts, the first thereof involving the entry of Edward M. Lewis, and in which count substantially the same allegations are made as in Count One of Indictment No. 605, with the exception that the name of the entryman is different and the land involved is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 19, township 39 north of range 5 east of Boise meridian, with other lands.

That in Count Two of said indictment appears substantially the same allegation as appears in Count One of Indictment No. 605, hereinbefore pleaded, except that the name of the entryman is given as

Hiram F. Lewis, and the land involved is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian, with other land. [161]

That in Count Three thereof substantially the same allegations are made as appear in Count One of Indictment No. 605, except that the name of the entryman is given as Charles Carey, and the land involved, with other land, is described as north half of northeast quarter, and the north half of the northwest quarter of section 15, township 38, north of range 6, East of Boise meridian.

That in Count Four thereof substantially the same allegations appear as in Count One of Indictment No. 605, except that the name of the entryman is given as Guy L. Wilson, and the land, with other lands, is described as lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of section 19, township 39, north of range five, east of Boise meridian.

That in Count Five of said indictment appear substantially the same allegations as in Count One of Indictment No. 605, with the exception that the name of the entryman is given as Frances A. Justice, and the land, with other land, is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38, north of range 6, east of the Boise meridian.

5.

INDICTMENT NO. 617.

That heretofore, in the United States District Court for the Northern Division, District of Idaho,

on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against the defendant William F. Kettenbach, with William B. Benton and Clarence W. Robnett, charging the defendants with the crime of conspiracy to defraud the [162] United States in violation of section 5440, R. S. U. S., which indictment is numbered 617, returned by the Grand Jury and filed by the clerk of the above-entitled court on November 6th, 1905, and now appears of record therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That in said indictment appear Counts One, Two and Three, and in each of said counts there appears substantially the same allegation as appears in Count One of Indictment No. 605, except that the name of the entryman in Count One of said indictment is given as John H. Long, and the land is described as lot 2, southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39, north of range 3, east of Boise meridian, and in Count Two the name of the entryman is given as Francis M. Long and the land is described as the north half of the southwest quarter and north half of the southeast quarter of section 13, township 29, north of range 3, east of Boise meridian; and in Count Three the name of the entryman is given as Benjamin F. Long and the land is described as the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39, north of range 3 E., B. M., together with other lands.

6.

INDICTMENT NO. 618.

That in the District Court of the United States within and for the District of Idaho, Northern Division, on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against two of the defendants herein, to wit: George H. [163] Kester and William F. Kettenbach, together with Fred Emery and C. W. Colby, charging the said defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment is No. 618, returned by the Grand Jury, and filed by the clerk of the above-entitled court on November 6th, 1905, and now appears on file therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains Counts One and Two, and in each of said counts appear substantially the same allegations as appear in Count One of Indictment No. 605, except that the name of the entryman in Count One thereof is given as James C. Evans, and the land is described as the south half of the northwest quarter and the west half of the southwest quarter of section 25, township, 39 north of range 3, east of Boise meridian, with other lands, and in Count Two thereof the name of the entryman is designated as Charles Dent, and the land is described as the north half of the northeast quarter, and the north half of the northwest quarter, of section 14, in township 39, north of range 3, east of Boise meridian, with other lands.

7.

INDICTMENT NO. 635.

That in the United States District Court for the Central Division, District of Idaho, on the 22d day of March, 1907, a Grand Jury duly and regularly empaneled and sworn, returned an indictment against the defendants herein, together with Isham N. Smith, John B. West, and Clarence W. Robnett, charging the defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment was returned by the Grand Jury and filed by the clerk of the above-entitled court March 22d, 1907, and which indictment [164] is numbered 635, now appears of record in the above-entitled court, and is made a part hereof as fully as if here set out.

That in said indictment appear substantially the same allegations as appear in Indictment No. 605, with the exception of the name of the entrymen and the description of the land. The name of the entryman given in Count One thereof is Edward M. Lewis, and the land is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39, north of range 5 east of Boise meridian, and in Count Two thereof the name of the entryman is given as Hiram F. Lewis and the land is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian. In Count Three thereof the name of the entryman is given as Charles Carey, and the land is described as the north half of the northeast quarter and the north half of

the northwest quarter of section 15, township 38, north of range 6, east of Boise meridian, and in Count Four thereof, the name of the entryman is designated as Guy L. Wilson, and the land is described as lots 3 and 4, and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 19, township 39, north of range 5, east of Boise meridian; and in Count Five thereof the name of the entryman is given as Frances A. Justice and the land is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38, north of range 6, east of Boise meridian, with other lands. [165]

INDICTMENT NO. 637.

That heretofore in the United States District Court within and for the Central Division, District of Idaho, a Grand Jury in the above-entitled court, duly and regularly empaneled and sworn, returned an indictment against the defendants, George H. Kester, William F. Kettenbach and William Dwyer, together with Isham N. Smith, John B. West, Clarence W. Robnett, John Doe and Richard Roe, whose true names are to the Grand Jurors unknown, and divers other persons whose true names are to the Grand Jurors unknown, which said indictment was returned by the Grand Jury and filed by the Clerk of said court on April 12, 1907, now appears of record therein, and is made a part hereof as fully as if here set out, which said indictment is in one count, and involves the entries of Edward M. Lewis, Hiram F. Lewis, Charles Carey, Guy L. Wilson, Frances A. Justice, Charles W. Taylor, Edgar J. Taylor, and

divers other persons whose names are alleged to be to the Grand Jurors unknown, and in which appears substantially the same allegation as appears in Count One of Indictment No. 605, and which said indictment herein referred to is No. 637, and embraces the land hereinbefore in said Indictment described.

9.

That to each and all of the indictments herein referred to the defendants entered their pleas of "Not Guilty," issues of fact were joined thereon, and thereafter in the United States District Court for the Northern Division, District of Idaho, at Moscow, in the County of Latah, in said District, on the 17th day of May, A. D. 1907, the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer were tried on said Indictment No. 615, returned and filed November 6, 1905, [166] charging the defendants with the crime of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., in which indictment the same issues were involved as are involved in the above-entitled cause, and in which trial there was used the evidence of Rowland A. Lambdin, Fred W. Shaeffer, Ivan R. Cornell and many of the other entrymen whose claims are involved in the above-entitled cause, and in which an effort is made to have the patents set aside.

10.

That after a trial before the jury in said court and in said cause, the jury returned a verdict of "Not Guilty" upon Counts One, Two and Five of Indictment No. 615, which verdict is hereto attached, marked Exhibit "A," and made a part hereof as

fully as if here set out, and which was filed June 17, 1907, and now appears of record and on file in the above-entitled court.

11.

That thereafter, on the 31st day of January, 1910, the plaintiff, The United States of America, by and through its proper officers, in the causes of The United States of America, Plaintiff, vs. William F. Kettenbach, George H. Kester and William Dwyer, Indictment No. 615; and The United States of America vs. William Dwyer, George H. Kester and William F. Kettenbach, Indictment No. 607; and The United States of America vs. William Dwyer, George H. Kester, William F. Kettenbach and Jackson O'Keefe, No. 605, moved for a consolidation of said indictments, which motion is now on file in said District Court within and for the Central Division, District of Idaho, copy of which is attached hereto, marked Exhibit "B," and made a part hereof as fully as if here set out; and thereafter, on the 15th day of February, 1910, the said court made an [167] order consolidating said Indictments No. 615, No. 607 and No. 605; and thereafter the defendants moved to consolidate with Indictments No. 615, No. 607 and No. 605, Indictments numbered 617, 618, 635 and 637, herein referred to, in so far as they related to the defendants William F. Kettenbach, George H. Kester and William Dwyer, and that a severance be granted as to the remaining defendants in the several indictments; after which the United States dismissed Indictments numbered 617 and 618 as to the defendants Kettenbach and Kester, and the Court made its

order consolidating Indictments No. 635 and No. 637 with Indictments No. 615, No. 607 and No. 605.

12.

That after the Government had closed its case in the said trial before a jury, the defendants moved the Court to require the Government to elect upon which indictments it would rely for a conviction, and the Government elected to rely upon Indictments numbered 615, 607 and 605, as consolidated, and thereafter the defendants introduced their evidence in their defense before said jury, in said court, and after argument of respective counsel and instructions of the Court, the jury retired to consider their verdict, and thereafter returned into court a verdict of "Not Guilty," as charged in the several indictments in the above-entitled causes, exclusive of Counts One, Two and Five in case No. 615, which Counts One, Two and Five were not submitted to the jury for their consideration, for the reason that a verdict had theretofore been returned in favor of the defendants finding them not guilty upon said counts, which verdict was duly and regularly filed by the Clerk of said Court on February 26, 1910, now on file herein, and a true copy of which is [168] attached hereto, marked Exhibit "C," and made a part hereof as fully as if here set out.

13.

That in said several indictments the same issues are involved as are involved in the above-entitled cause, to wit: The charge of conspiracy to defraud the United States in violation of section 5440, R. S. U. S., and to acquire large tracts of public land in

violation of the timber and stone laws of the United States, by perjury, subornation of perjury and by procuring entrymen to file upon the land in violation of law, and it will be necessary to use the same evidence in support of the issues in the above-entitled cause as was used in the several criminal actions in support of the indictments on file herein; and to try the defendants upon the complainant's amended bill in equity in the above-entitled cause is, in effect, to try the defendants twice for the same offense, which is prohibited by the Constitution of the United States.

14.

That the Government has heretofore elected to prosecute the defendants criminally for the same and identical charges pleaded and alleged in the above-entitled cause, and having elected to rely upon a criminal prosecution for the punishment of the defendants, the complainant should not be heard or permitted to prosecute a civil action at this time for the purpose of depriving the defendants of their property, and for the purpose of trying and punishing the defendants twice for the same offense.

15.

That the said United States District Court within and for the District of Idaho, both for the Northern [169] and Central Divisions, had and acquired jurisdiction of each of the defendants in each of the subject matters involved herein; and had and possessed jurisdiction to hear and determine each and all of the matters in issue therein.

WHEREFORE, these defendants pray that their plea of former acquittal be held to be a bar to the

prosecution in this action, and that this action be dismissed and that they be permitted to go without day.

WILLIAM F. KETTENBACH.
GEORGE H. KESTER.
WILLIAM DWYER.

GEO. W. TANNAHILL,
Solicitor for Defendants, Residing at Lewiston,
Idaho. [170]

Exhibit "A."

*United States District Court, Northern Division,
District of Idaho.*

No. 615.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Verdict.

We, the jury in the above-entitled cause, find the defendant William F. Kettenbach Not Guilty as charged in the first count of the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the second count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the third count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the fourth count in the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the fifth count

of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the first count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the second count of the indictment, and we find the defendant George H. Kester Guilty as charged in the third count of the indictment, and we find the defendant George H. Kester Guilty as charged in the fourth count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the fifth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the first count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the second count of the indictment, and we find the defendant William Dwyer Guilty as charged in the third count of the indictment, and we find the defendant William Dwyer Guilty as charged in the fourth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the fifth count of the indictment.

M. D. FREEDENBERG,

Foreman of the Jury.

[Endorsed]: No. 615. In the District Court of the United States for the District of Idaho. United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer. Verdict. Filed June 16, 1907. A. L. Richardson, Clerk. [171]

Exhibit "B."

UNITED STATES OF AMERICA.

*In the District Court of the United States for the
District of Idaho, Central Division.*

No. 615.

UNITED STATES OF AMERICA

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

No. 607.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH.

No. 605.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH (Impleaded
with JACKSON O'KEEFE).

NOW COMES the United States of America, by
Peyton Gordon, Esq., special assistant to the Attor-
ney General of the United States, and attorney for
the plaintiff in this behalf, and MOVES the Court
to consolidate the above-entitled causes for trial
against George H. Kester and William F. Ketten-
bach and William Dwyer, defendants therein named,

said motion being based upon the files and records in said causes.

PEYTON GORDON,
Special Assistant to the Attorney General of the
United States and Attorney for said Plaintiff.
Boise, Idaho, January 31, 1910.

Received copy Feby. 1, 1910.

GEO. W. TANNAHILL,
Atty. for Defts. [172]

Exhibit "C."

*In the District Court of the United States, District
of Idaho, Northern Division.*

No. 615.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

No. 605.

THE UNITED STATES

vs.

JACKSON O'KEEFE, WILLIAM DWYER,
GEORGE H. KESTER and WILLIAM F.
KETTENBACH.

No. 607.

THE UNITED STATES

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH.

We, the jury in the above-entitled consolidated

causes, find the defendants, William F. Kettenbach, George H. Kester and William Dwyer, not guilty as charged in the several indictments, in the above-entitled cause, exclusive of counts one, two, and five in cause numbered 615.

WM. B. ALLISON,
Foreman.

[Endorsed]: No. 615—Consolidated. U. S. District Court, Northern Division, District of Idaho. The United States vs. William F. Kettenbach et al. Verdict. Filed Feb. 26, 1910. A. L. Richardson, Clerk.

[Endorsed]: Filed May 11th, 1910. A. L. Richardson, Clerk. [173]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.
Defendants.

Order [Overruling Plea in Bar].

Now come the defendants, and by leave of the Court are allowed to file their fourth defense and plea in bar. Thereupon, by agreement of the solicitors for complainant and defendants, the said plea was set down for argument forthwith upon its sufficiency in law to constitute a bar to a part of the bill

to which it is addressed, and upon hearing the sufficiency of said plea, it appearing to the Court that the plea is insufficient in law, it is ordered that the same be and hereby is overruled.

Dated May 11, 1910. [174]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBNETT, FRANK W. KET-
TENBACH,

Defendants.

Order [Allowing Amendment of Amended Bill].
ORDER ALLOWING PLAINTIFF TO AMEND
AMENDED COMPLAINT.

A motion having been heretofore made and filed on behalf of the complainant, for an order of this Court allowing it to amend its Amended Bill of Complaint in the above-entitled cause, by interlineation as to the matter, and in the words and figures in said motion set out and described, the Court being fully advised in the premises, and the defendants to the said cause consenting to the granting of the motion, it is hereby ordered that the said complainant be, and hereby is, allowed to amend its Amended Bill of Complaint in said cause, by interlineation as to the

matter, and in the words and figures set out in said motion and stipulation.

Dated this 25th day of May, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 25, 1910. A. L. Richardson, Clerk. [175]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH,

Defendants.

Stipulation [Concerning Amendment of Amended Bill].

It is hereby agreed and stipulated by and between the parties to the above-entitled cause that the complainant may have an order in the above-entitled Court, allowing it to amend its Amended Bill of Complaint, by interlineation in the following particulars, to wit:

After the words, "entry and purchase," on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word "of."

After the words, "said Carrie D. Maris," in the last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long. [176]

After the words, "said Carrie D. Maris," in line 2, from the top of page 15 of said Amended Bill, the following words and figures, to wit: "Did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words, "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

After the words, "John H. Little did," in line 7, from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Wren Pierce did," in line 17, from the top of page 15 of said Amended Bill, the words and figures, "on the 21st day of March, 1903, make application to enter and did."

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said

Amended Bill, the following words and figures, to wit: "On the 21st day of March, 1903, make application to enter and did."

After the words, "Joseph B. Clute did," on line 7, from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On the 24th day of March, 1903, make application to enter and did." [177]

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "John H. Long did," in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Bertsel H. Ferris did," in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 31st, 1903, make application to enter and did."

After the words, "George Ray Robinson did," in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On

March 31st, 1903, make application to enter and did.”

After the words, “Charles W. Taylor did,” in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”
[178]

After the words, “Jackson O’Keefe did,” in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar J. Taylor did,” in line 3 from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Joseph H. Prentice did,” in line 7, from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Fred W. Justice did,” in line 11, from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar H. Dammarell did,” in line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar H. Dammarell did,” in line 3, from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

II.

It is further stipulated by and between the said

parties hereto that the answer heretofore filed by and on behalf of the defendants in the said cause to the complainant's Amended Bill of Complaint shall stand as [179] their answers to the complainant's Bill of Complaint as amended, in the particulars hereinbefore set forth in this stipulation, except that such answers so standing as aforesaid shall be amended by interlineation, by striking out the words "on" in the first line of paragraph 1, on page 20; and in the first line of paragraphs 1 and 2 on page 21, and in the first line of paragraph 1 on page 22, and by inserting in lieu thereof the words "prior to."

III.

It is further stipulated by and between the said parties hereto that the disclaimers heretofore filed by and on behalf of the defendants, including the answer and disclaimer of Frank W. Kettenbach to the complainant's Amended Bill of Complaint in said cause, shall stand to the complainant's Bill of Complaint as amended in the particulars hereinbefore set out in this stipulation.

IV.

It is further stipulated by and between the parties hereto that the replications heretofore filed by and on behalf of the complainant in the above-entitled cause to the answers and disclaimers of the several defendants in said cause to the complainant's Amended Bill of Complaint shall stand as the replications to the said disclaimers, and also to the answers

as amended as set forth in the second paragraph of this stipulation.

PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant. [180]

Solicitor for Defendants, William F. Kettenbach,
George H. Kester, and William Dwyer.

Solicitor for Frank W. Kettenbach.
CLARENCE W. ROBNETT,
Defendant.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [181]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLARENCE
ROBNETT and FRANK W. KETTENBACH,

Defendants.

**Motion [for Order Concerning Amendments to
Amended Bill].**

COMES NOW the United States of America, complainant in the above-entitled cause, by Peyton Gor-

don, Special Assistant to the Attorney General, its solicitor, and by direction of George W. Wickersham, Attorney General, moves the Court for an order permitting amendments to the Amended Bill of Complaint in this cause, by interlineation, as follows, to wit:

1.

After the words, "entry and purchase," on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word "of."

2.

After the words, "said Carrie D. Maris," in the last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benj. F. Long.

3.

After the words, "said Carrie D. Maris," in [182] line 2 from the top of page 15 of said Amended Bill, the following words and figures, to wit: "Did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

4.

After the words, "John H. Little did," in line 7 from the top of page 15 of said Amended Bill, the words "on the 20th day of March, 1903, make application to enter and did."

5.

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

6.

After the words, "Wren Pierce did," in line 17 from the top of page 15 of said Amended Bill, the words and figures, "on the 21st day of March, 1903, make application to enter and did."

7.

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said Amended Bill, the following words and figures, to wit: "On the 21st day of March, 1903, make application to enter and did."

8.

After the words, "Joseph B. Clute did," on line [183] 7 from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On the 24th day of March, 1903, make application to enter and did."

9.

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to en-

ter and did.”

10.

After the words, “John H. Long did,” in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

11.

After the words, “Benjamin F. Long did,” in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

13.

After the words, “Benjamin F. Long did,” in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

14.

After the words, “Bertsel H. Ferris did,” in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: “On March 31st, 1903, make application to enter and did.” [184]

15.

After the words, “George Ray Robinson did,” in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On March 31st, 1903, make application to enter and did.”

16.

After the words, “Charles W. Taylor did,” in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

17.

After the words, "Jackson O'Keefe did," in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

18.

After the words, "Edgar J. Taylor did," in line 3 from the top of page 17 of said Amended Bill, the following words and figures to wit: "On April 25th, 1904, make application to enter and did."

19.

After the words, "Joseph H. Prentice did" in line 7 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

20.

After the words, "Fred E. Justice did," in line 11 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

21.

After the words, "Edgar H. Dammarell did," in [185] line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

22.

After the words, "Edgar H. Dammarell did," in line 3 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On

April 25th, 1904, make application to enter and did.”

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [186]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE W. ROBNETT, FRANK W. KET-
TENBACH,

Defendants.

**Stipulation [Concerning Amendment of Amended
Bill].**

It is hereby agreed and stipulated by and between the parties to the above-entitled cause that the complainant may have an order in the above-entitled Court, allowing it to amend its Amended Bill of Complaint, by interlineation in the following particulars, to wit: [187]

After the words, “entry and purchase,” on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word “of.”

After the words, “said Carrie D. Maris,” in the

last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long.

After the words, "said Carrie D. Maris," in line 2, from the top of page 15 of said Amended Bill, the following words and figures, to wit: "did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words, "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

After the words, "John H. Little did," in line 7, from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of, said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Wren Pierce did," in line 17, from the top of page 15 of said Amended Bill, the words [188] and figures, "on the 21st day of March, 1903, make application to enter and did."

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said Amended Bill, the following words and figures, to

wit: "On the 21st day of March, 1903, make application to enter and did."

After the words, "Joseph B. Clute did," on line 7, from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On the 24th day of March, 1903, make application to enter and did."

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "John H. Long did," in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Bertsel H. Ferris did," in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 31st, 1903 [189] make application to enter and did."

After the words, "George Ray Robinson did," in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On

March 31st, 1903, make application to enter and did."

After the words, "Charles W. Taylor did," in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Jackson O'Keefe did," in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Edgar J. Taylor did," in line 3 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Joseph H. Prentice did," in line 7, from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Fred E. Justice did," in line 11 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Edgar H. Dammarell did," in line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."
[190]

After the words, "Edgar H. Dammarell did," in line 3, from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

II.

It is further stipulated by and between the said parties hereto that the answers heretofore filed by and on behalf of the defendants in the said cause to the complainant's Amended Bill of Complaint shall stand as their answers to the complainant's Bill of Complaint *shall stand as their answers to the complainant's Bill of Complaint* as amended, in the particulars hereinbefore set forth in this stipulation, except that such answers so standing as aforesaid shall be amended by interlineation, by striking out the word "on," in the first line of paragraph 1, on page 20; and in the first line of paragraphs 1 and 2 on page 21, and in the first line of paragraph 1 on page 22, and by inserting in lieu thereof the words "prior to."

III.

It is further stipulated by and between the said parties hereto that the disclaimers, including the answer and disclaimer of Frank Kettenbach heretofore filed by and on behalf of the defendants to the complainant's Amended Bill of Complaint in said cause, shall stand to the complainant's Bill of Complaint as amended in the particulars hereinbefore set out in this stipulation.

IV.

It is further stipulated by and between the [191] parties hereto that the replications heretofore filed by and on behalf of the complainant in the above-entitled cause to the answers and disclaimers of the several defendants in said cause to the complainant's Amended Bill of Complaint shall stand as the repli-

cations to the said disclaimers, and also to the answers as amended as set forth in the second paragraph of this stipulation.

PEYTON GORDON,

Special Assistant to the Attorney General,
Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants, William F. Kettenbach,
George H. Kester, and William Dwyer.

JAMES E. BABB,

Solicitor for Frank W. Kettenbach.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [192]

*In the Circuit Court of the United States for the
District of Idaho.*

IN EQUITY—Nos. 388-406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

**Order [Appointing A. M. Wing Special Examiner
to Take Testimony at Portland, Oregon].**

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that A. M. Wing, of Portland, Oregon, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special examiner,

to take the testimony therein of such witnesses as may be offered by either party at Portland, Oregon.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [193]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

**Order [Appointing Warren Truitt a Special
Examiner].**

The parties to this cause having requested the Court to appoint an Examiner,

It is hereby ordered that Warren Truitt, Esq., of Moscow, Idaho, be, and he hereby is appointed a Special Examiner herein to take the testimony in this cause, and to report the same to the Court with all convenient speed. His compensation for such services will be at the rate of \$10.00 per diem.

Dated July 15th, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [194]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

**Order [Extending Time to October 15, 1910, for
Taking of Testimony].**

Upon application of the complainant, by Peyton Gordon, Special Assistant to the Attorney General, its solicitor, and a number of the defendants, through their solicitors, George W. Tannahill and James E. Babb and C. C. Cavanaugh,

It is ordered, that the time for the taking of the testimony in the above-entitled cause be, and the same hereby is extended to and including the 15th day of October, 1910. The complainant to begin the taking of its testimony on the 22d day of August, 1910.

Dated July 15, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [195]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing Leo Longley Special Examiner
to Take Testimony at Los Angeles, California].**

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that Leo Longley, of Los Angeles, California, be, and he is hereby, appointed and constituted a Special Examiner of this Court for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony herein of such witnesses as may be offered by either party at Los Angeles, California.

FRANK S. DIETRICH,

District Judge. [196]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Order [Appointing Warren Truitt a Special Examiner to Take Testimony at Spokane, Washington].

Upon the application of complainant in the above-entitled causes, it is ordered that Warren Truitt of Moscow, Idaho, be, and he is hereby appointed and constituted a Special Examiner of this court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Spokane, Washington.

Dated August 20th, 1910.

FRANK S. DIETRICH,

Judge. [197]

In the Circuit Court of the United States, Ninth Judicial Circuit, for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER, CLAR-
ENCE ROBNETT, FRANK W. KETTEN-
BACH,

Defendants.

**Order to Take Bill Pro Confesso Against Defendant
Clarence Robnett.**

The subpoena in the above-entitled cause having been returned, which return has been filed, and it appearing therefrom that the said subpoena was duly served upon the defendant Clarence Robnett, and an appearance having been entered on the part of said defendant Clarence Robnett on the 7th day of April, 1910, and since said appearance no demurrer, or plea, or answer having been filed, although said pleading should have been filed before this date, therefore, on motion of Peyton Gordon, Special Assistant to the Attorney General and solicitor for complainant, it is ordered and decreed that the bill herein be taken *pro confesso* as to said defendant Clarence Robnett.

Dated this 12th day of September, A. D. 1910.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed Sept. 12, 1910. A. L. Richardson, Clerk. [198]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to December 24, 1910, to
File Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing the complainant's brief in cases No. 388, 406 and 407 is hereby extended to and including December 24, 1910.

Dated November 26th, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed November 26, 1910. A. L.
Richardson, Clerk. [199]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to January 15, 1911, to File
Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing the complainant's brief in cases No. 388, 406, and 407, is hereby extended to and including January 15th, 1911.

Dated this 24th day of December, 1910.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed December 26th, 1910. A. L. Richardson, Clerk. [200]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

**Order [Extending Time to February 15, 1911, to File
Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing complainant's brief in the above cases is hereby extended to and including the 15th day of February, 1911.

Dated this 14th day of January, 1911.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed January 14th, 1911. A. L. Richardson, Clerk. [201]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to February 26, 1911, to File
Plaintiff's Brief, etc.].**

For good cause shown, it is ordered that the time of the plaintiff for filing and serving brief is extended to and including February 26th, 1911. The defendants are given twenty days after the service thereof in which to serve and file answering briefs, and the plaintiff is given fifteen days after such service in which to reply.

Dated January 26th, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed January 28th, 1911. A. L. Richardson, Clerk. [202]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to April 20, 1911, to File
Plaintiff's Brief, etc.].**

For good cause shown, it is ordered that the time of the plaintiff for filing and serving brief in the above cases is extended to and including April 20, 1911. The defendants are given twenty days after the service thereof in which to serve and file answering briefs, and the plaintiff is given ten days after such service in which to reply.

Dated February 23d, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed February 23, 1911. A. L. Richardson, Clerk. [203]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to May 20, 1911, to File
Complainant's Brief].**

Upon motion of counsel for the complainant herein,

It is ordered that the time for serving and filing complainant's brief in the above-entitled causes is

hereby extended to and including May 20, 1911; the defendants to have thirty days thereafter in which to serve and file answering brief, and the complainant to have ten days thereafter in which to serve and file reply brief.

Dated the 15th day of April, 1911.

FRANK S. DIETRICH,

District Judge. [204]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Stipulation [Concerning Hearing of Motion to
Reopen Causes, etc.].**

IT IS HEREBY AGREED by and between counsel for the respective parties in the above-entitled causes that the hearing upon a motion and notice thereon heretofore served and filed in these causes for the purpose of reopening the said causes and the taking of additional and newly discovered testimony therein may be heard at a future date by agreement of counsel, and that upon such agreement by counsel as to a date definite and specific on further notice of said hearing, said notice is waived.

IT IS FURTHER AGREED by and between the

respective parties thereto that the hearing of this motion, and if the same is granted and such additional testimony taken therein, shall in no manner interfere with the speeding of the causes or the preparation of the briefs on the testimony already taken.

It is further stipulated and agreed by and between the parties to said causes that the deposit slip set out in the affidavit served herewith, both in the [205] front and the back of the same, is in the handwriting of the defendant William F. Kettenbach, and that the same is a part of the files of the Lewiston National Bank, and that said deposit slip is now on file with the clerk of the Court in the case of U. S. vs. Kester and Kettenbach, marked Plt's. Exhibit No. 39.

Dated this 20th day of April, 1911, at Boise, Idaho.

PEYTON GORDON,

Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants.

J. E. BABB,

Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [206]

[Motion for Order Opening Causes Nos. 388, 406 and 407 for Purpose of Including in Record Additional and Newly Discovered Evidence.]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

MOTION.

Comes now Peyton Gordon, Special Assistant to the Attorney General, solicitor for the complainant in the above-entitled causes, and moves the Court for an order opening the above-entitled causes for the purpose of including in the record in said causes additional and newly discovered evidence, as based upon the affidavit hereto attached to this motion and made a part hereof.

PEYTON GORDON,

Special Assistant to Attorney General. [207]

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says he is Special Assistant to the Attorney General of the United States, and alleges for the complainant in the above-entitled causes, that on the 24th day of October, 1910, the testimony in the above-entitled causes was closed, and that the time for preparing and filing briefs in the same on behalf of the complainant has been extended to and

including May 20, 1911; that since the closing of said causes, new and additional testimony has been discovered, which said testimony is relevant, important and material in proving the allegations of complainant's Bills of Complaint; further, that said testimony is indispensable for the proper presentation of said causes to the Court on the allegations in said Bills as aforesaid; that said additional testimony was discovered after the closing of the taking of the testimony in said causes as aforesaid and could not with due diligence have been discovered before, and in truth and in fact the existence of such additional testimony was not known to your affiant and could not have been known with all due diligence until a date subsequent to the closing of said testimony as aforesaid; that such newly discovered testimony is of the following nature:

A deposit slip of the Lewiston National Bank, Lewiston, Idaho, which is as follows:

THE LEWISTON NATIONAL BANK,

Lewiston, Idaho.

Deposited by Kittie E. Dwyer

4-26-1904.

two checks

given to [208]

Wiggin for

cash 98.00

50

48

Less cash 2.00

96.00

and on the back of said deposit slip:

Guy Wilson	8
Greenberg	8
Bingham	8
McMillan	8
Mrs. Rowlands	8
J. O'Keefe	8
Prentice	8
E. Taylor	8
Dammarell	8
Mrs. Justice	8
C. W. Taylor	8
F. Justice	8
	<hr/>
	96
J. O'Keefe	8
	<hr/>
	88

The purpose of the introduction of this exhibit and the evidence related and incident thereto is to support the allegations of Plaintiff's Bills of Complaint and show that the defendants, Kester and Kettenbach, paid the filing fees in the land office at Lewiston, Idaho, upon the timber claims of the persons whose names are enumerated on the back thereof.

PEYTON GORDON.

Subscribed and sworn to before me this 20th day of April, 1911.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [209]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Notice of Motion [for Opening of Causes Nos. 388,
406 and 407].**

To the Above-named Defendants, Jas. E. Babb, Geo.
W. Tannahill, Your Attorneys, and to Each of
You:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for complainant, will on the 26th day of April, 1911, before the above-entitled court in the Federal courtrooms, City of Boise, Idaho, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, will move the Court for an order opening the above-entitled causes for the purpose of introducing additional and newly discovered testimony, in accordance with motion herewith served upon you, together with this notice. Upon the hearing of said motion, counsel will use notice of motion; the motion and the affidavit attached to said motion; all the files and records in the above-entitled causes or so much thereof as may be necessary.

PEYTON GORDON,
Solicitor for Complainant. [210]

Service of the above notice, together with a copy of the motion and the attached affidavit thereto, acknowledged by receipt of copies this 20th day of April, 1911.

GEO. W. TANNAHILL,
Solicitor for Defendants.

J. E. BABB,
Solicitor for Certain Defendants.

[Endorsed]: Filed April 20th, 1911. A. L. Richardson, Clerk. [211]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WM. F. KETTENBACH et al.,
Defendants.

Order [Extending Time to May 27, 1911, to File Complainant's Brief, etc.].

Upon the request of counsel for the complainant, and for cause shown,

It is hereby ordered that the complainant have until and including the 27th day of May, 1911, in which to file brief in the above cases, and that the defendants have thirty days thereafter in which to file their brief, and that the complainant have ten days there-

after in which to file reply brief.

Dated this 18th day of May, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed May 18th, 1911. A. L. Richardson, Clerk. [212]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 388, 406, 407.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Order [Extending Time to June 3, 1911, to File Complainant's Brief, etc.].

ORDER EXTENDING TIME FOR SERVING AND FILING BRIEF.

Upon motion of counsel for the complainant herein,

IT IS ORDERED that the time for serving and filing complainant's brief in the above-entitled causes is hereby extended to and including June 3, 1911; the defendants to have thirty days thereafter in which to serve and file answering brief; and the complainant to have ten days thereafter in which to serve and file reply brief.

Dated this 27th day of May, 1911.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed May 27th, 1911. A. L. Richardson, Clerk. [213]

In the Circuit Court of the United States for the District of Idaho, Central Division.

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WM. F. KETTENBACH et al.,

Defendants.

Order [Extending Time to August 14, 1911, to File Reply Brief].

Upon the request of counsel for the complainant in this case, it is hereby ordered that the time for serving and filing reply brief is extended to and including August 14th, 1911.

Dated this 5th day of August, 1911.

FRANK S. DIETRICH.

[Endorsed]: Filed August 7th, 1911. A. L. Richardson, Clerk. [214]

In the Circuit Court of the United States for the District of Idaho, Central Division.

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Order Extending Time to August 17, 1911, for
Serving and Filing Reply Briefs.**

Upon the request of counsel for the complainant in these causes, it is hereby ordered that the time for serving and filing reply briefs is extended to and including August 17th, 1911.

Dated this 14th day of August, 1911.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed August 14, 1911. A. L. Richardson, Clerk. [215]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

Specifications of Objections to Evidence.

COME NOW the defendants herein, within the time allowed by order of the above-entitled court, and specify their objections to the evidence as follows:

1. The defendants object to a conversation with David Justice, appearing on page 10 of the Record.
2. The defendants object to a question asked the witness, Guy L. Wilson, relative to an alleged con-

versation with William Dwyer concerning questions which would be asked the witness on final proof.

3. The same objection to the same class of evidence, appearing on page 24 of the Record.

4. The objection of the defendants to the question asked the witness, Guy L. Wilson, relative to William Dwyer directing the witness in relation to taking up a timber claim, and the same objections, appearing on pages 33, 34 and 35 of the Record, relative to the final proof papers and the questions asked the witness upon the making of final proof.

5. The defendants object to each and every final proof paper offered in evidence, and to each and every question asked the witnesses concerning their final proof, and renew [216] their motions to strike out evidence relative to the final proof papers and the questions asked the witnesses upon the making of final proof, and the defendants rely upon each and every objection made to each and every paper introduced in evidence in relation to final proof.

6. The objection of the defendants to reading in evidence the questions and answers and certain evidence given by the witness, Guy L. Wilson, in a criminal case of the United States vs. William Dwyer, at the May Term, 1907, and which was read from the Case No. 1606, Transcript of Record, Volume 1, which objection appears on page 39 of the Record, and the same objection appearing on page 40 of the Record; and the same objection appearing at the bottom of page 40 of the Record, and the same objections, there being two in number, appearing on page 41 of the Record; and the same objections, there being two

in number, appearing on page 42 of the Record; the same objection, there being three in number appearing on page 43 of the Record; the same objection appearing on page 44 of the Record; the same objections, there being two in number, appearing on page 45 of the Record; and also upon the other grounds urged in the objections appearing on said page; the same objection appearing on page 46 of the Record. The objections appearing on page 47 of the Record, as irrelevant and immaterial, and the same objection appearing on page 47 of the Record as going to all of the same class of testimony.

7. The objection of the defendants to the evidence of Ella Wilson concerning questions to be asked the witness, Guy L. Wilson upon his final proof, and the objection appearing at the bottom of page 59 of the Record, [217] relative to the objection of the defendants extending to all of the same class of testimony.

8. The objection of the defendants, appearing on page 61 of the Record, as to refreshing the witness' memory, and the same objections, there being two in number, on said page 61 of the Record, and as to the same objection extending to all of the same class of testimony.

9. The objection of the defendants, appearing on page 63 of the Record, as to counsel reading from the evidence given in another case.

10. The objection of the defendants to the evidence of Ella Wilson, appearing on page 64 of the Record, as to the same being incompetent, irrelevant, immaterial and a repetition.

11. The objection of the defendants to the evidence of Ella Wilson, appearing on page 67 of the Record, as to the same being leading and suggestive.

12. The objection of the defendants appearing on page 78 of the Record, to the evidence of Fred Schafer, and to evidence in relation to matters occurring subsequent to the filing of the sworn statement and prior to the making of final proof. The same objection appearing on page 82 of the Record, and extending to all of the evidence of the same class. The same objection and motion to strike out certain parts of the witness' evidence on page 83 of the Record.

13. The objection of the defendants to the final proof papers of the witness Schafer, appearing on page 84 of the Record.

14. The objection of the defendants to the evidence of the witness, William Havernick, extending to bills 388 [218] and 407 of the Record.

15. The objection of the defendants to the evidence of the witness, William Havernick, in relation to the final proof, appearing on page 100 of the Record, and the objection of the defendants to the same evidence, appearing on the same page, as immaterial.

16. The objections of the defendants to the evidence of witness, William Havernick, appearing on page 101 of the Record, there being two in number, and especially the objection of the defendants to the final proof papers of William Havernick, appearing on page 101 of the Record.

17. The objection of the defendants, Frank W. Kettenbach and the Clearwater Timber Company, to

the final proof papers of William Havernick, appearing on page 102 of the Record.

18. The objection of the defendants to the final proof papers of Alma Havernick, appearing on page 106 of the Record.

19. The objection of the defendants to the evidence of William J. White appearing on page 111 of the Record, as to the same extending to Bills 388 and 407.

20. The objection of the defendants to the final proof papers of William J. White, appearing on pages 126 and 127 of the Record.

21. The objection of the defendants to the evidence of the witness Soren Hansen being considered in connection with Bills 388 and 407, appearing on page 133 of the Record.

22. The objection of the defendants to the evidence of the witness Soren Hansen, appearing on page 135 of the Record, and the suggestion that the same extend to all of the same class of evidence of the witness. [219]

23. The objection of the defendants to the final proof papers of the witness Soren Hansen, appearing on page 141 of the Record.

24. The objection of the defendants to the evidence of the witness, William McMillan, being considered in connection with Bills 388 and 407, appearing on page 147 of the Record.

25. The objection of the defendants to the questions asked the witness, McMillan, relative to his final proof, appearing on page 154 of the Record.

26. The objection of the defendants to the final

proof papers of William McMillan, appearing on page 159 of the Record.

27. The objection of the defendants to the evidence of Charles Carey, appearing on page 162 of the Record, upon the ground that the witness' claim is not involved. Same objection appearing on page 163 of the Record.

28. The objection of the defendants to the cross-examination by the complainant of the witness, Charles Carey, appearing on page 170 of the Record.

29. The objection of the defendants to the evidence of the witness in relation to the witness' final proof, appearing on page — of the Record.

30. The objection of the defendants to the final proof papers of the witness, Charles Carey, appearing on page 181 of the Record.

31. The objection of the defendants to the final proof papers of the witness, Mamie P. White, appearing on page 204 of the Record.

32. The objection of the defendants to the evidence of the witness, Charles Myers, being considered in relation to Bills 406 and 388, appearing on page 207 of [220] the Record.

33. The objection of the defendants to the question asked the witness, Charles Myers, in relation to the money for final proof, appearing on page 212 of the Record.

34. The objection of the defendants to the final proof papers of the witness, Charles Myers, appearing on page 216 of the Record.

35. The objection of the defendants to the evidence of the witness, Mrs. Janey Myers, appearing

on page 223 of the Record; that is, as to it being considered in relation to Bills 388 and 407.

36. The objection of the defendants to the final proof papers of Janey Myers, appearing on page 230 and 231 of the Record.

37. The objection of the defendants to the questions asked the witness, Joel H. Benton, relative to his homestead claim, appearing on page 237 of the record, and the objection of the defendants to the evidence of the witness being considered in relation to Bills 388 and 407, appearing on pages 236 and 237 of the Record. The same objection to all of the same class of evidence, appearing on page 248 of the Record.

38. The objection of the defendants to the examination of the witness upon evidence given upon a former trial, appearing on page 241 of the Record.

39. The objection of the defendants to a question asked the witness, Joel H. Benton, appearing on page 253 of the Record.

40. The objection of the defendants to the final proof papers of Joel H. Benton, appearing on page 258 of the [221] Record.

41. The objection of the defendants to the final proof papers of Frederick W. D. Newman, appearing on pages 284 and 285 of the Record.

42. The objection of the defendants to the final proof papers of Daniel W. Greenburg, appearing on page 302 of the Record.

43. The objection of the defendants to the evidence of Charles Dent, being considered in relation

to Bills 388 and 407, appearing on page 305 of the Record.

44. The objection of the defendants to the final proof papers of the witness, Charles Dent, appearing on pages 320 and 321 of the Record.

45. The objection of the defendants to the final proof papers of the witness, Edna P. Kester, appearing on page 327 of the Record.

46. The objection of the defendants to the evidence of the witness, Elizabeth White, appearing on page 330 of the Record, especially in relation to Bills 388 and 407.

47. The objection of the defendants to the final proof papers of the witness, Elizabeth White, appearing on page 352 of the Record.

48. The objection of the defendants to the evidence of Van V. Robinson, being considered in support of Bills 388 and 407, appearing on page 356 of the Record.

49. The objection of the defendants to the final proof papers of Van V. Robinson, appearing on page 369 of the Record.

50. The objection of the defendants to the evidence of the witness Frank J. Bonney, and so far as the same relates to Bills 388 and 406, appearing on page 374 of [222] the Record.

51. The objection of the defendants to the final proof papers of the witness, Frank J. Bonney, appearing on page 388 of the Record.

52. The objection of the defendants to the evidence of the witness Clinton E. Perkins, appearing on page 393 of the Record, and as the same relates

to Bills 406 and 388.

53. The objection of the defendants to the final proof papers of Clinton E. Perkins, appearing on page 407 of the Record.

54. The objection of the defendants to the evidence of the witness, Francis A. Clausen, being considered in support of Bills 388 and 407, appearing on page 419 of the Record.

55. The objection of the defendants to the final proof papers of the witness, Francis A. Clausen, appearing on page 432 of the Record.

56. The objection of the defendants to the evidence of Gary Van Artsdalen being considered in support of Bills 407 and 388, appearing on page 435 of the Record.

57. The objection of the defendants to the final proof papers of the witness Gary Van Artsdalen, appearing on page 442 of the Record.

58. The objection of the defendants to the evidence of the witness, Bertsel H. Ferris, appearing on page 444 of the Record.

59. The objection of the defendants to the evidence of the witness, Bertsel H. Ferris, appearing on page 451 of the Record. [223]

60. The objection of the defendants to all of the evidence of Bertsel H. Ferris relating to final proof, appearing on page 456 of the Record, and also the defendants' objection appearing on said page to the evidence of the witness on the ground of its being immaterial.

61. The objection of the defendants to the final proof papers of the witness Bertsel H. Ferris,

appearing on page 463 of the Record.

62. The objection of the defendants to the evidence of the witness Hiram F. Lewis, appearing on page 415, the claim not being involved in either of the actions.

63. The objection of the defendants to the evidence of the witness Albert J. Flood, appearing on page 557 of the Record.

64. The motion of the defendants to strike out the evidence of the witness, Albert J. Flood, appearing on page 569 of the Record, and the renewal of that motion appearing on page 570 of the Record.

65. The objection of the defendants to the evidence of the witness Walter Williams, appearing on page 573 of the Record.

66. The objection of the defendants to the evidence of the witness John E. Nelson in support of Bills 388 and 407, appearing on page 585 of the Record. And the defendants' objections on the grounds of materiality and hearsay at the bottom of page 585 of the Record.

67. The objection of the defendants to the final proof papers of John E. Nelson, appearing on page 597 of the Record.

68. The defendants' objection to the evidence of the [224] witness, Charles W. Taylor, appearing on page 603 of the Record, and especially in relation to Bills 406 and 407.

69. The objections of the defendants to the final proof papers of the witness, Charles W. Taylor, appearing on page 622 of the Record.

70. The objections of the defendants to the evi-

dence of the witness, Edgar J. Taylor, appearing on page 656 of the Record. And the same objections appearing on page 657, there being three in number on said page 657.

71. The objection of the defendants to the final proof papers of the witness Edgar J. Taylor, appearing on page 667 of the Record.

72. The objection of the defendants to the evidence of the witness David S. Bingham, in support of Bills 388 and 407, appearing on page 674 of the Record.

73. The objection of the defendants to the evidence of the witness David S. Bingham, as to the witness' understanding, and also the defendants' objection to the conversation of the witness with Jackson O'Keefe, appearing on page 675 of the Record; and the objection of the defendants to the question asked the witness, David S. Bingham, as to the same being a conclusion; and the motion of the defendants to strike out the evidence of the witness, David S. Bingham, appearing on page 676 of the Record.

74. The objection of the defendants to conversations of the witness, David S. Bingham, with Jackson O'Keefe and others, not in the presence of the defendants, appearing on page 682 of the Record.

75. The objection of the defendants to the deed executed by the witness, David S. Bingham, and so far as [225] relates to Bills 388 and 407, appearing on page 685 of the Record.

76. The objections of the defendants to the final proof papers of David S. Bingham, appearing on

page 687 of the Record.

77. The objection of the defendants to the evidence of the witness, Edgar H. Dammarell, in so far as it relates to Bills 406 and 407, appearing on page 701 of the Record.

78. The objection of the defendants to the conversations of the witness with Jackson O'Keefe not in the presence of the defendants, appearing on page 702 of the Record; especially, inasmuch as Jackson O'Keefe was at the time the witness was testifying, and for a long time prior to the trial, deceased.

79. The objection of the defendants to the final proof papers of the witness, Edgar H. Dammarell, appearing on page 721 of the Record.

80. The objection of the defendants to the evidence of the witness, Samuel C. Hutchins, as the witness' entry was not involved in either of the Bills, appearing on page 727 of the Record.

81. The objection of the defendants to the evidence of the witness, Wynn. W. Peffley, as the witness' entry was not involved in either of the bills, the objection appearing on page 731 of the Record.

82. The objection of the defendants to the evidence of the witness, John P. Shaw, as the witness' entry was not involved in either of the bills, the objection appearing on page 735 of the Record. The same objection appearing on page 736 of the Record.

83. The objection of the defendants to the evidence [226] of the witness, Andrew J. Sherburn, as the witness' entry was not involved in either of the Bills, the objection appearing on page 740 of the Record.

84. The objection of the defendants to the evidence of the witness, F. D. Morrison, appearing on page 743 of the Record,—no entry of the witness being involved in either of the Bills.

85. The objection of the defendants to the evidence of the witness, Joseph H. Prentice, in support of Bills 406 and 407, and the objection of the defendants to the conversations with Jackson O'Keefe, who was at the time the witness was testifying, deceased,—said objection appearing on page 750 of the Record. The same objection to all of the evidence of the witness as to conversations with Jackson O'Keefe, appearing on page 750 of the Record.

86. The objection of the defendants to the final proof papers of the witness, Joseph H. Prentice, appearing on page 767 of the Record.

87. The objection of the defendants to the final proof papers of the witness, John H. Long, appearing on page 791 of the Record.

88. The objection of the defendants to the evidence of the witness, Frances M. Long, as the same relates to Bills 406 and 407, appearing on page 794 of the Record.

89. The objection of the defendants to the final proof papers of the witness, Frances M. Long, and Annie E. Long, appearing on page 807 of the Record, and the same objection appearing at the bottom of page 807 of the Record.

90. The objection of the defendants to the evidence of the witness, Benjamin F. Long, admitted in support [227] of Bills 406 and 407, appearing on page 825 of the Record.

91. The objection of the defendants to the final proof papers offered in evidence of the witness Benjamin F. Long, appearing on page 825 of the Record.

92. The objection of the defendants to the evidence of the witness, George J. Robinson, being admitted in support of Bills 406 and 407, appearing on page 830 of the Record.

93. The objection of the defendants to the final proof papers of George J. Robinson, appearing on page 844 of the Record.

94. The objection of the defendants to the evidence of the witness, Ellsworth M. Harrington, being admitted in support of Bills 406 and 407, appearing on page 856 of the Record.

95. The objection of the defendants to the final proof papers of the witness, Ellsworth M. Harrington, appearing on page 868 of the Record.

96. The objection of the defendants to the affidavit offered in evidence by the complainant, of Frances A. Clausen, which objection appears on page 909 of the Record.

97. The objection of the defendants to the final proof papers of the witness, Frances A. Clausen, appearing on page 921 of the Record.

98. The objection of the defendants to the final proof papers of Jackson O'Keefe, appearing on page 922 of the Record.

99. The objection of the defendants to the final proof papers of Joseph B. Clute, appearing on page 923 of the Record. [228]

100. The objection of the defendants to the final

proof papers of William E. Helkenberg, appearing on page 924 of the Record.

101. The objection of the defendants to the final proof papers of Wren Pierce, appearing on page 926 of the Record.

102. The objection of the defendants to the reading into the Record of the evidence of Norman Jackson, appearing on page 927 of the Record.

103. The objection of the defendants to the evidence of Norman Jackson, made at the time the witness was testifying in a former trial, appearing on page 930 of the Record.

104. The objection of the defendants to the final proof papers of William H. Kincaid, appearing on page 936 of the Record.

105. The objection of the defendants to the final proof papers of George W. Miller, appearing on page 937 of the Record.

106. The objection of the defendants to the final proof papers of Charles F. Schumaker, appearing on page 938 of the Record.

107. The objection of the defendants to the final proof papers of Charles B. Thomberg, appearing on page 939 of the Record.

108. The objection of the defendants to the final proof papers of Charles S. Myers, appearing on page 939 of the Record.

109. The objection of the defendants to the final proof papers of Charles G. Vogelmann and of Frank L. Moore, appearing on page 940 of the Record.

110. The objection of the defendants to the evidence in relation to the contest of William Dwyer

of the entry [229] of Albert O. Wasson, appearing at page 940 of the Record; and the objection of the defendants to the filing of Homestead Entry of William B. Walker, at page 940 of the Record; and the objection of the defendants to the filing of Homestead Entry of William B. Walker, at page 940 of the Record.

111. The objection of the defendants to the evidence in relation to the Homestead Entry of Walter Williams, appearing at page 941 of the Record.

112. The objection of the defendants to the evidence of the Homestead Entry and Contest of Albert J. Flood, appearing on page 942 of the Record.

113. The objection of the defendants to the Homestead Entry and Contest of John P. Harlan, appearing on page 943 of the Record; also of John W. Huber. The same objection as to the evidence in relation to the homestead entry of William R. Lawrence and Fred H. McConnell, appearing on page 944 of the Record. The same objection as to the homestead entry and contest of Frank A. McConnell, appearing on page 945 of the Record. The same objection as to the evidence of the homestead entry and contest of Albert Anderson and George G. James, at page 946 of the Record. The same objection as to the evidence of the homestead entry and the contest of the same of John McHardie and Carl Rogers, appearing on page 948 of the Record. The same objection as to the homestead entry and contest of Frank Lillegren, appearing on page 950 of the Record. The same objection as to the evidence in relation to the entry of Susan Comstock, appearing

on page 952 of the Record. [230]

114. The objection of the defendants to the evidence of Miss Elizabeth Kettenbach, in so far as the same relates to Bills 388 and 407, appearing on page 1049 of the Record.

115. The objection of the defendants to the final proof papers of Miss Elizabeth Kettenbach, appearing on page 1065 of the Record.

116. The objection of the defendants to the evidence of the witness, Martha E. Hallett, in so far as the same relates to Bills 388 and 407, appearing on page 1080 of the Record.

117. The objection of the defendants to the final proof papers of the witness, Martha E. Hallett, appearing on page 1091 of the Record.

118. The objection of the defendants to the evidence of John H. Little, in so far as the same relates to Bills 406 and 407, appearing on page 1094 of the Record.

119. The motion of the defendants to strike out certain portions of the evidence of the witness, John H. Little, appearing on page 1096 of the Record.

120. The objection of the defendants to the evidence of the witness, John H. Little, in relation to final proof, appearing on page 1101 of the Record.

121. The objection of the defendants to the final proof papers of the witness, John H. Little, appearing on page 1104 of the Record.

122. The objection of the defendants to the evidence of the witness, E. N. Brown, appearing on page 1109 of the Record.

123. The objections of the defendants to the evi-

dence of E. N. Brown, and motion to strike the same, there being three objections in number, appearing on page 1111 of the [231] Record.

124. The objections of the defendants to the evidence of the witness, E. N. Brown, appearing on page 1111 of the Record.

125. The objection of the defendants to Receiver's Final Receipt issued to the witness, Bertsel H. Ferris, appearing on page 1155 of the Record.

126. The objection of the defendants to the final proof papers of the witness, ——— Roland, appearing on page 1156 of the Record.

127. The objection of the defendants to the final proof papers of the witness William B. Benton, appearing on page 1157 of the Record. The same objection to the final proof papers of the witness, Benjamin F. Bashor, appearing on page 1158 of the Record. The same objection to the admission in evidence of the final proof papers of Pearl Washburn, appearing on page 1159 of the Record. The same objection to the final proof papers of the witness, James C. Evans, appearing on page 1160 of the Record. The same objection to the final proof papers of the witness, George Morrison, appearing on page 1162 of the Record. The same objection to the final proof papers of Edwin M. Hyde, appearing on page 1163 of the Record. The same objection to the final proof papers of the witness, Robert O. Waldman, appearing on page 1164 of the Record.

128. The objection of the defendants to the evidence of the witness, Harvey J. Steffey, appearing

on page 1224 of the Record, especially in so far as the same relates to Bills 388 and 406.

129. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, relative to the claim of Winnie Lane, the claim not being [232] involved in the action, appearing on page 1225 of the Record. The same objection to the evidence in relation to the Kenner claim, appearing on page 1227 of the Record.

130. The objection of the defendants appearing on page 1243 of the Record, so far as the same relates to Bills 388 and 406, the same being a check marked "Exhibit 55."

131. The objection of the defendants to the statement of the witness, appearing on page 1247 of the Record, as being a conclusion.

132. The objection of the defendants to evidence in relation to a question, appearing on page 1251 of the Record, as not being the best evidence.

133. The motion of the defendants to strike out the statement of the witness relative to an understanding, appearing on page 1258 of the Record.

134. The motion of the defendants to strike out the statement of the witness, appearing on page 1259 of the Record, as to an understanding.

135. The motion of the defendants to strike out a statement of the witness as to what an understanding was, appearing on page 1271 of the Record.

136. The objection of the defendants to the admission of certain checks in evidence, appearing on page 1276 of the Record.

137. The objection and motion of defendants to

strike out a certain statement of the witness, appearing on page 1279 of the Record, and also two similar objections and motions, appearing on the same page. [233]

138. The objection of the defendants to reports of the Lewiston National Bank, appearing on page 1445 of the Record, and the same objection appearing on page 1446 of the Record, and the same objection appearing on page 1447 of the Record; and the same objection as to relevancy and materiality, appearing on page 1449 of the Record; and also the objection appearing at the bottom of page 1449 relative to a certain note of Naylor and Norlin not appearing in the Bills Receivable.

139. The objection of the defendants to a note of Naylor and Norlin and guaranteed by George H. Kester, appearing on page 1450 of the Record.

140. The objection of the defendants to the evidence of the witness, Joseph M. Molloy, relative to a line-up at the land office, appearing at page 1460 of the Record, and also that the same objection extend to all of the same line of inquiry.

141. The objections of the defendants to the evidence of the witness, Edward M. Lewis, upon the ground that the entry of the witness was not involved in any of the Bills, the same being two in number, appearing at page 1487 of the Record.

142. The objection of the defendants to conversations between the witness and his brother, Hiram F. Lewis, not in the presence of the defendants, appearing at page 1488 of the Record.

143. The objection of the defendants to the offer

in evidence relative to an affidavit made by the witness, Edward M. Lewis, for Inspector O'Fallon, appearing on page 1497 of the Record. Same objection on page 1498 of the Record.

144. The objection of the defendants to a deed made [234] by Carrie D. Rexford, and to final proof papers of the witness, Carrie D. Rexford, appearing on page 1424 of the Record.

145. The objection of the defendants to the final proof papers of Benjamin F. Bashor, appearing on page 1536 of the Record.

146. The objection of the defendants to the final proof papers of Drury M. Gammon, appearing on page 1540 of the Record.

147. The objection of the defendants to certain plats identified by the witness, M. J. Dowd, appearing on page 1564 of the Record.

148. The objection of the defendants to certain evidence offered by the witness, Harvey J. Martin, appearing on page 1579 of the Record.

149. The objection of the defendants to the final proof papers of the witness, Roland A. Lambdin, offered in evidence, appearing on page 1591 of the Record.

150. The objection of the defendants to certain evidence of the witness, Clarence W. Robnett, as leading and suggestive, appearing on page 1633 of the Record. Same objections, there being two in number, appearing on page 1636 of the Record. Same objection on page 1637 of the Record. Same objection appearing on page 1641 of the Record. Same objections, there being two in number, appear-

ing on page 1647 of the Record. And the same objection to all of the same class of testimony, appearing on page 1644 of the Record, and there being two in number. Same objection appearing on page 1649 of the Record. Same objection as to materiality and relevancy, appearing on page 1653 of the record.

151. The motion of the defendants to strike out all [235] of the evidence of the witness relative to contests by the defendants, William Dwyer, appearing on page 1660 of the Record.

152. Objection of the defendants to the evidence of the witness, Clarence W. Robnett, upon the ground of materiality and relevancy, appearing on page 1669 of the Record.

153. The objection of the defendants to the evidence of the witness, Francis M. Goodwin, upon the ground that it was irrelevant and immaterial, appearing upon page 1664 of the Record.

154. The objection of the defendants to an affidavit of Roland A. Lambdin, marked Plaintiff's Exhibit 96 for Identification, appearing upon page 1676 of the Record.

155. The objection of the defendants to a question asked the witness, Francis M. Goodwin, relative to looking through the rooms of Francis A. Clausen, appearing upon page 1683 of the Record.

156. The objections of the defendants to a certain question asked the witness, Francis M. Goodwin, there being two in number, and upon the ground that the same is immaterial and irrelevant, and also leading and suggestive, appearing upon page 1684

of the Record. Same objection appearing upon page 1685 of the Record.

157. The objection of the defendants to Mr. Gordon coaching and directing the witness, Clarence W. Robnett, appearing upon page 1690 of the Record. Same objections, there being four in number, appearing upon page 1691 of the Record.

158. The objection of the defendants to the evidence of Clarence W. Robnett, concerning the final proof, appearing on page 1693 of the Record.

159. The objection of the defendants to a question asked [236] the witness, Clarence W. Robnett, as being leading and suggestive, appearing on page 1696 of the Record. Similar objection appearing on page 1698 of the Record.

160. The objection of the defendants to the evidence of Clarence W. Robnett, appearing on page 2012 of the Record, as leading and suggestive.

161. The objection of the defendants to the evidence of James T. Jolly, in so far as it relates to Bills 388 and 406, appearing on page 2028 of the Record, and the stipulation that the same objection shall be considered as applying to all of the evidence without repetition.

162. The objection of the defendants to the question propounded to the witness, James T. Jolly, appearing on page 2029 of the Record, as a conclusion, and referring to the assembling of timber claims by locating people upon them.

163. The objections of the defendants to the question propounded to the witness, James T. Jolly, as leading and suggestive, appearing on page 2038 of

the Record, being two objections in number, on the same page, and two similar objections appearing on page 2041 of the Record.

164. The objection of the defendants to the final proof papers of the witness, James T. Jolly, appearing on page 2043 of the Record.

165. The objections of the defendants to certain questions asked the witness, James T. Jolly, on re-direct examination, there being two in number, one at the top of the page, upon the ground that the same was a repetition, and relating to an understanding between the witness, Steffey, and other people, appearing on page 2055 of the Record.

166. The objection of the defendants to the evidence of the witness, Effie A. Jolly, as the same applies to Bills 388 and 406 appearing on page 2059 of the Record. [237]

167. The objection of the defendants to the final proof papers of Effie A. Jolly, appearing on page 2072 of the Record.

168. The objection of the defendants to the evidence of Mrs. Mary A. Loney, as the same relates to Bills 388 and 406, appearing on page 2082 of the Record.

169. The motion of the defendants to strike out the answer of the witness, Mary A. Loney, the same being hearsay, appearing on page 2086 of the Record.

170. The two objections of the defendants, appearing on page 2095 of the Record, upon the ground that the questions were leading and suggestive.

171. The four similar objections of the defendants, appearing on page 2096 of the Record, and five

similar objections, appearing on page 2097 of the Record, and three similar objections, appearing on page 2098 of the Record.

172. The objection of the defendants to the final proof papers of the witness, Mary A. Loney, appearing on page 2099 of the Record.

173. The objection of the defendants to the evidence of Charles E. Loney, as the same applies to Bills 388 and 406, appearing on page 2106 of the Record.

174. The objection of the defendants to a question asked the witness, Charles A. Loney, appearing on page 2110 of the Record, and two similar objections appearing on page 2111 of the Record, and the motion to strike out an answer of the witness, appearing on the same page.

175. The objection of the defendants to a question calling for the understanding of the witness, appearing on page 2119 of the Record; and the same objection appearing about the center of page 2119, upon the ground that the same was leading and suggestive.

176. The objection of the defendants to the final proof [238] papers of Charles E. Loney, appearing on page 2120 of the Record.

177. The motion of the defendants to strike out an answer of the witness, John E. Chapman, appearing on page 2131 of the Record, and the objection to the next question as calling for a conclusion, appearing on the same page.

178. The motion of the defendants to strike out certain evidence of the witness, John E. Chapman,

appearing on page 2138 of the Record.

179. The motion of the defendants to strike out certain evidence of the witness, John E. Chapman, appearing on page 2147 of the Record.

180. The objection of the defendants to the evidence of the witness, Ivan R. Cornell, as the same relates to Bills 388 and 407, appearing on page 2157 of the Record.

181. The objection of the defendants to the witness testifying to an idea he had, appearing on page 2160 of the Record.

182. The objection of the defendants to a question propounded to the witness, Ivan R. Cornell, relative to his final proof, appearing on pages 2169 and 2170 of the Record.

183. The objection of the defendants to a question propounded to the witness, Ivan R. Cornell, upon the ground that the same is irrelevant and immaterial, appearing on page 2179 of the Record.

184. The objection of the defendants to the final proof papers of Ivan R. Cornell, appearing on page 2181 of the Record.

185. The objection of the defendants to certain documents offered in evidence by the complainant, the same being the original selection No. 6, Charitable Institutions, filed in the United States Land Office at [239] Lewiston, Idaho, April 21st, 1904, which was subsequently withdrawn, the objection appearing on page 2217 of the Record. The same objections to the same class of evidence appearing on page 2220 of the Record. The same objection to the same class of evidence, and especially certain

letters introduced in evidence, appearing on page 2233 of the Record. The same objection to the same class of evidence, appearing on page 2235 of the Record. The same objection to the same class of evidence appearing on page 2238 of the Record. The same objection to the same class of evidence, appearing on page 2256 of the Record. The same objection to the same class of evidence, appearing on page 2278 of the Record. The same objection to the same class of evidence, appearing on page 2280 of the Record. The same objection to the same class of evidence, appearing on page 2282 of the Record. The same objection to the same class of evidence, appearing on page 2291 of the Record. The same objection to the same class of evidence, appearing on page 2298 of the Record. The same objection to the same class of evidence, appearing on page 2300 of the Record. The same objection to the same class of evidence, appearing on page 2301 of the Record. The same objection to the same class of evidence, appearing on page 2302 of the Record. The same objection to the same class of evidence appearing on page 2303 of the Record. The same objection to the judgment of conviction entered against William Dwyer, appearing on page 2305 of the Record, and a similar objection to Complainant's Exhibit 107 and Complainant's Exhibit 108, appearing on page 2305 of the Record, and a similar objection to the petition of Frank W. Kettenbach for a change of venue, which objection appears on page 2306 of the Record. [240]

186. The objection of the defendants to a ques-

tion propounded to the witness, Harvey J. Steffey, appearing on page 2307 of the Record.

187. The objection of the defendants to all of the evidence of like nature, appearing on page 2308 of the Record.

188. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2308 of the Record.

189. The objection of the defendants and motion to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2309 of the Record, and a similar objection to a question relative to the entry of Margaret Goldsmith, appearing on page 2309 of the Record.

190. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2310 of the Record.

191. The objection of the defendants to a question propounded to the witness, Harvey J. Steffey, as being leading and suggestive, appearing on page 2312 of the Record.

192. The objection of the defendants to a question propounded to the witness, Harvey J. Steffey, appearing on page 2313 of the Record.

193. The defendants' objection to a question propounded to the witness, Harvey J. Steffey, as being irrelevant and immaterial, appearing on page 2317 of the Record.

194. The objection of the defendants to the evidence of the witness, Lon E. Bishop, as the same applies to Bills 388 and 407, appearing on page 2320 of the Record.

195. The objection of the defendants to the evidence of the witness, Lon E. Bishop, as being incompetent, irrelevant and immaterial, appearing on page 2322 of the Record, and a similar objection appearing on page 2323 of the Record.

196. The objection of the defendants to the final proof papers of Lon E. Bishop appearing on page 2332 of the Record.

197. The objection of the defendants to the evidence [241] of Charles Smith, as the same applies to Bills 388 and 407, appearing on page 2338 of the Record.

198. The objection of the defendants to the final proof papers of Charles Smith, appearing on page 2356 of the Record.

199. The objection of the defendants to certain evidence of Thomas H. Bartlett, appearing on page 2361 of the Record, on the ground that it is irrelevant and immaterial.

200. The objection of the defendants to the evidence of Thomas H. Bartlett, as irrelevant and immaterial, the entry not being involved in the action, appearing on page 2364 of the Record. A similar objection, there being two in number, appearing on page 2365 of the Record. A similar objection, there being two in number, appearing on page 2366 of the Record. A similar objection, there being two in number, appearing on page 2367 of the Record. A similar objection, appearing on page 2368 of the Record.

201. The objections of the defendants, there being three in number, to the evidence of the witness,

J. C. Jansen, as to the competency, relevancy and materiality of the witness' evidence, appearing on page 2370 of the Record. A similar objection, appearing on page 2371 of the Record. A similar objection, appearing on page 2372 of the Record. A similar objection, appearing on page 2374 of the Record, there being three in number. A similar objection, there being three in number, appearing on page 2375 of the Record.

202. The motion of the defendants for a nonsuit after the close of the complainant's case, appearing on page 2388 of the Record. [242]

203. The objection of the defendants to a question asked the witness, J. C. Jansen, on direct examination, appearing at page 2903 of the Record, the objection being that the evidence is irrelevant, incompetent and immaterial; and two similar objections appearing on page 2904 of the Record.

204. The objection of the defendants to a question asked the witness, J. C. Jansen, upon the ground that the evidence was irrelevant, incompetent and immaterial, and not proper rebuttal testimony.

205. The objection of the defendants to a question asked the witness, J. C. Jansen, on rebuttal, at page 2906 of the Record, on the ground that the same was immaterial, and the witness not being competent to answer. Same objection on page 2907 of the Record.

206. The objection of the defendants to the admission in evidence of certain land office records, appearing on page 2925 of the Record.

207. The objection of the defendants to re-opening the case for the admission of further evidence after the same had been closed, appearing on page 2970 of the Record.

208. The objection of the defendants to the admission in evidence of certain documentary evidence, appearing at page 2976 of the Record.

209. The objection of the defendants to the admission in evidence of Complainant's Exhibit 120, appearing at page 2978 of the Record.

Most respectfully submitted,

GEO. W. TANNAHILL,

Attorney for Defendants, Residing at Lewiston,
Idaho.

[Endorsed]: Filed November 30, 1911. A. L.
Richardson, Clerk. [243]

[Opinion.]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—Nos. 388—406—407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

March 21, 1912.

Appearances:

PEYTON GORDON, Special Assistant to the Attorney General, for Complainant.

JAMES E. BABB, for Lewiston National Bank, Idaho Trust Company, Potlatch Lumber Company, Clearwater Timber Company, and Frank W. Kettenbach.

GEO. W. TANNAHILL, for William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer.

MORGAN & MORGAN, for Western Land Company.

EUGENE A. COX, for Elizabeth Kettenbach, Curtis Thatcher, Elizabeth W. Thatcher, and Elizabeth White.

DIETRICH, District Judge:

Each of the three above-entitled cases, numbered 388, 406 and 407, has been brought by the United States against William F. Kettenbach, George H. Kester, and William Dwyer, and other parties, to set aside patents to lands acquired under the provisions of what is popularly known as the Timber [244*—1†] and Stone Act, approved June 3, 1887 (20 Stat. 89), as amended to extend to all public land states by the Act of August 4, 1892. In No. 388 seventeen different patents are attacked; in No. 406, thirty-seven, and in No. 407, eight. As outlined in the bills of

*Page-number of Original Certified Transcript of Record.

†Original page-number of Opinion as same appears in Original Certified Transcript of Record.

complaint, the theory of the Government is that the defendants Kettenbach, Kester and Dwyer, about the year 1901 or 1902, devised a scheme by which they were, by indirection, to acquire public timber lands in excess of the maximum amount allowed by law to any one person, and that from time to time, in effecting the purpose of such conspiracy, they joined to themselves different persons, notably Clarence W. Robnett, Jackson O'Keefe, Fred Emory, C. W. Colby, and Harvey J. Steffey, and, either directly or through the persons so associated with them, entered into unlawful agreements with numerous qualified entrymen, by which such persons should, ostensibly for their own use and benefit, but in reality for the use and benefit of the defendants, acquire title, with the understanding that immediately or soon after the acquisition thereof they should, for a small consideration, convey it to the defendants or one of them. It is further the theory of the Government that the three defendants were to have undivided interests in the fruits of the unlawful scheme. By stipulation of all of the parties to the several suits, there was a consolidation for the purpose of taking the testimony, with the understanding that only so much of the evidence so taken should be considered in the disposition of any one of the three suits as should be deemed to be pertinent to the issues therein involved.

It is obvious that unless the circumstances surrounding the acquisition of title to the numerous claims involved are the same or very similar, a detailed consideration of all the issues presented by the record, both of fact and of law, [245—2]

would be impossible without extending the discussion to an unreasonable length, and upon investigation I do not find such identity of conditions widely prevailing. So far, therefore, as the general aspects of the case are concerned, both those of law and of fact, it must in the main suffice to state conclusions and general principles, without any attempt to review the voluminous record of circumstantial evidence and conflicting testimony, or to analyze or comment upon the numerous decided cases more or less in point.

TESTIMONY OF CLARENCE W. ROBNETT.

While the evidence was taken and reported by a special examiner, many of the transactions involved have been the subjects of investigation in this court at different times during the last five years, in connection with the criminal prosecution of the defendants, and certain of the witnesses appearing before the examiner have testified upon the same subjects one or more times in the criminal trials, so that there has been some opportunity for observing their manner of testifying and of forming some estimate of their disposition and intelligence. Owing to the unusual status of the witness Robnett, and the peculiar conditions under which he testified, and also the fact that, to establish certain of its contentions, the Government necessarily depends very largely, if not entirely, upon his credibility and the weight to be accorded to his testimony, it is perhaps appropriate that comment should be made thereon at this time. Admittedly his testimony is to be treated as that of an accomplice, and therefore is to be received cautiously and scrutinized with care. As in considering

the evidence of the defendants themselves respect should be had to their deep interest in the result of the suit, as affecting their credibility and the weight to be given to their testimony, so it is [246—3] generally thought that the inducements to falsehood on the part of an accomplice are so great that in criminal cases, in many jurisdictions, a conviction cannot be had upon the uncorroborated testimony of an accomplice, and generally juries are cautioned against giving hasty or undue credence to such testimony. True, in suits like these the same measure of proof is not required as in criminal cases, where it is necessary to establish the guilt of the accused beyond a reasonable doubt, but the same general considerations applicable to the testimony of defendants and accomplices in criminal cases are applicable here; that is, their testimony is to be considered in the light of their deep interest and strong temptation to pervert or color the truth. *United States vs. Reagan*, 157 U. S. 301.

But while the testimony of Robnett is to be treated as that of an accomplice that fact is not the most serious consideration affecting its credibility. An accomplice may, and not infrequently does, take the witness-stand with a reputation for both truth and integrity unimpeached, save for the charge concerning which he testifies, and in which he is said to be implicated. The case of this witness is entirely different, as will appear from a brief statement of the facts touching his conduct and the circumstances under which he testified. In the first place, it appears from credible evidence, independent of his ad-

missions to the same effect, that in several instances he deliberately induced entrymen to make false statements both in their applications and in their testimony upon final proof, relative to entries herein involved, which false statements, although in some cases not constituting technical perjury, involved on the part of Robnett all of the moral obliquity of perjured statements, because they were made under oath, at a time when it was assumed that such oath was authorized by law. [247—4] Subsequently he was indicted and convicted of subornation of perjury, in inducing entrymen in their preliminary applications in the land office, falsely to represent under oath, that they had personally visited the lands applied for prior to initiating their entry. Upon writ of error the judgment of this Court was reversed, for the reason that that part of the sworn statement was not authorized by statute, and was only a requirement of the land department, and therefore could not be made the basis of a charge of perjury or subornation of perjury, even though the statement made was wilfully false. In the second place, after Robnett's conviction, and prior to the reversal referred to, the three principal defendants were put on trial upon the charge of conspiring to defraud the United States out of the title and possession of some of the timber lands described in the bills of complaint. At such trial Robnett was called and testified upon behalf of the defendants, and, while so testifying, under oath, in open court, he made many statements of fact which are directly contrary to, and wholly irreconcilable with, the testimony which he gave be-

fore the examiner in these cases. And again, not a great while before giving his testimony before the examiner, he made affidavit to statements wholly irreconcilable with statements here made under oath. Under such circumstances it is insisted by the defendants that it cannot properly be held that the witness recognizes the sanctions of an oath, or has any regard therefor; and there is suggested the further question, to which testimony the greater weight should be accorded, that given at the criminal trial, favorable to the defendants, or that given in the present suits, favorable to the Government. There is no evidence of any change of moral attitude, and the witness does not pretend to say that he has been driven by remorse or is actuated by a high sense of duty. At the time he was engaged in persuading entrymen to make false representations [248.—5] to the officers of the land department he should, by reason of his general intelligence, his business experience, his religious training and environment, have been quite as fully conscious as he has at any time since been, or the moral quality of the act of making or inducing a false statement under oath; and the incentive or inducement at that time was, and could have been, nothing more than the comparatively small profit which he may have hoped to make out of the enterprise in which he was engaged, whereas, as we shall see, his testimony here was given under conditions touching his personal liberty. When testifying in the criminal trial the only possible incentives which we may assume he had to testify falsely were his friendship to the defendants,

and a possible feeling upon his part that his own personal interest in the criminal prosecutions which were being waged against him was, in a measure, linked with the interests of the defendants, and that therefore, in testifying as he did, he was acting in self protection. To put it in another way, and to take the view most favorable to the Government, he testified in that case with the interest of a defendant seeking by his testimony to escape the consequences of an unfavorable verdict upon a charge of conspiracy to defraud, and possibly of subornation of perjury, although upon that charge he had already been tried and found guilty. While, in that view, his testimony at that time was given under conditions strongly tempting him to pervert the truth, the conditions under which he gave the present testimony may have presented quite as strong a temptation, if not a stronger one. It seems that while indictments were still pending against him, charging him with offenses connected with his land transactions, and while he was employed as bookkeeper in the Lewiston National Bank, he violated the national banking laws in a number of particulars, one of such violations being the abstraction and embezzlement of divers sums of money [249—6] aggregating an amount alleged to be greatly in excess of \$100,000.00. He was arrested upon a charge of one or more of such violations of the law, and held to appear before the grand jury. After such arrest, and prior to the convening of the grand jury, negotiations were entered into between him and special agents of the Government, at the instance of the latter, as a result

of which he appears to have concluded to testify as a witness for the Government, not only in these suits, but in the criminal cases still pending against the three principal defendants and others, and also before the grand jury in relation to the affairs of the Lewiston National Bank, which were to be made the subject of investigation. It is quite unnecessary to relate the details of what occurred in this connection. He states that no definite promise of immunity was ever made to him, and possibly that he was informed by the special agents that they did not have the authority to make such an agreement. With some apparent reluctance, he admits that he decided to take the course which he was asked to take, and which, after some hesitation, he concluded to take, with the hope that in some way he would profit thereby. From that time on he appears to have placed himself wholly at the service of the officers of the Government. He testified before the grand jury which was engaged with the affairs of the Lewiston National Bank, and which, after making investigation, returned several indictments charging the defendants Kester and Kettenbach, and also the defendant F. W. Kettenbach, and Robnett himself, with a large number of offenses, including embezzlement, in violation of the national banking laws. Later, at a trial of the three principal defendants, upon the charge of conspiring to defraud the United States, in connection with the entry and acquisition of title to timber lands herein involved, he testified, upon behalf of the Government, his testimony being in many respects [250—7] the same as that given before the

examiner, and later he testified at three different trials involving charges against the defendant Kester and the defendants W. F. Kettenbach and F. W. Kettenbach, relating to the affairs of the Lewiston National Bank. In the meantime, before the trial of any of the national bank cases, the criminal charges against him, growing out of his timber transactions, were dismissed upon motion of the Government.

The contention is made upon behalf of the defendants that, as a result of the overtures of the special agents of the Government, an agreement was entered into with Robnett, possibly not express, by which, in consideration of a promise of immunity, he was to testify on behalf of the Government, not only in the bank cases, but also in the timber cases, both criminal and civil. While the contention is not without support in the record, it rests upon no substantive evidence, but is an inference only from the attitude and conduct of Robnett and the officers of the Government. In the absence of substantial evidence, and especially in view of the disclaimer of knowledge of any such agreement upon the part of the responsible representatives of the Government, I should be loath to believe that any agreement was entered into. But the question whether there was or was not such an agreement is quite immaterial. The primary inquiry relates to the motives which actuated the witness in placing himself in the hands of the prosecuting officers, and the incentives he had for giving testimony disclosing criminality upon his part. It is wholly unimportant whether or not he had any agreement

for immunity, if, as he admits to be the case, he pursued the course which he did pursue, and testified for the Government, with the hope of receiving favorable consideration. It is not to be assumed that any of the officers of the Government would knowingly encourage or countenance a falsification of the facts by him, but, being conscious of the fact that by reason of the pendency of the bank indictments his liberty was largely within [251—8] the power of the prosecuting officers, there must have been present, to an unusual degree, the strong inducement under which an accomplice frequently testifies, to give such evidence as, in his judgment, would tend to ingratiate him in the good will of those upon whom he was dependent. It is quite incredible that he did not learn from some source that the prosecution, as a rule, is not ungrateful for information furnished by persons charged with crime, and his hope that he might profit by such consideration proves not to have been entirely unfounded, for, subsequent to his giving testimony in the several cases, it is a matter of record in this court, and of common knowledge, that upon his pleading guilty to each of six different counts, charging violation of the national banking laws, by making false entries or false reports, and five counts, charging embezzlement or abstraction of funds belonging to the bank, aggregating approximately \$137,000.00, he was promptly granted an absolute pardon.

In view of these circumstances, it must, I think, be concluded that the conditions under which he testified before the examiner were calculated to operate

quite as potently in inducing him to pervert the truth as the conditions under which he first gave his testimony in the criminal prosecution of the three principal defendants. To give any great measure of weight to testimony coming from one who apparently does not hesitate to profit by perjury and who here may have had the strongest possible incentive to pervert or color the truth would be to put aside, as wholly unimportant, the supposed sanctions of an oath, and to act arbitrarily. True, the witness may have been telling the truth, but where his testimony is uncorroborated upon what ground shall it be assumed or presumed that he was telling the truth? Resort may be had to internal evidences of the credibility of his story, but the evidences thus presented are neither conclusive nor highly persuasive. Of his contradictions [252—9] it may be said by the one side that they are only such discrepancies as are to be looked for in an account given by a truthful witness of numerous and complicated transactions, and by the other, that they disclose the falsity of his testimony as a whole. On the one side it may be reasonably argued that it is incredible that a witness could have fabricated a story so detailed, and upon the other hand, with apparently equal reason, it can be argued that it is incredible that any witness could have recalled the detailed facts and circumstances and the numerous conversations, important and unimportant, to which the witness testified.

FORMER TESTIMONY OF WITNESSES.

As already stated, many of the witnesses who appeared before the examiner had theretofore testified

in open court or made affidavits relative to the same matters, and much of such testimony, and a number of such affidavits, have been read into this record. There seems to have been, if not a disregard, a serious misapprehension on the part of counsel of the conditions under which the former statements of a witness may be received, and the probative effect thereof. In some instances such statements seem to have been called to the attention of the witness for the ostensible purpose of refreshing his memory, and in other cases they were offered in evidence for impeachment purposes. It is doubtless true that some of the witnesses called for the Government testified unwillingly, and one of them at least declined to testify at all, upon the ground that answers to the questions propounded might tend to incriminate him. While the trial court may, in its discretion, permit the party calling a hostile witness to put to him leading questions, and may also permit leading questions to be asked when counsel conducting the examination is surprised by the statements of the witness, and may, in case of such surprise, receive evidence of inconsistent statements made by the witness at other times, and [253—10] may permit a witness to refresh his recollection by reference to a memorandum or writing, such discretion is not unlimited, and such rules are not without qualifications. A party knowing that a witness will testify in a manner prejudicial to his contentions cannot call such witness merely for the purpose of getting into the record, as substantive evidence favorable to him, statements made under oath by such witness at some other time. A contra-

dictory statement is receivable only for the purpose of relieving the surprised party of the prejudice of testimony that he had no reason to expect would be given. Under no conditions can it be regarded as substantive proof to establish one of the issues of the case, but at most it can avail the party by whom it is invoked only to the extent of rebutting or offsetting the effect of the unexpected testimony of his own witness. Such a statement therefore, can never serve as the basis for affirmative relief. With rare exceptions it was improper to import into the record in this case statements made by such witnesses at former hearings under the guise or upon the pretext of refreshing their memories, as was so frequently done, for the affidavits and testimony to which attention of the witnesses was directed were given months and even years after the occurrence of the events to which they related. The precise question is decided and elaborately discussed in *Putnam vs. United States*, 162 U. S. 687. In that case the trial court permitted the prosecution to refresh the memory of a witness by calling his attention to the testimony given by him before the grand jury which returned the indictment upon which the defendant was being tried. The transaction constituting the subject of investigation occurred in August, 1893, and the indictment was returned in December of the same year. The testimony before the grand jury was therefore given about four months after the transaction to which it related. The Court said: [254—11] “We think it clear that testimony given after this lapse of time was not contemporaneous, and that it

would not support a reasonable probability that the memory of the witness, if impaired at the time of the trial, was not equally so when his testimony on the prior occasion was committed to writing.”

It was further said that the very essence “of the right to thus refresh the memory of the witness is that the matter used for that purpose be contemporaneous with the occurrences as to which the witness is called upon to testify.”

Continuing, the Court said: “In conflict with the well-settled rule to which we have just referred, there are some adjudications of the courts of last resort of several states, noted in the margin of this opinion, holding that there exists an exception to the general rule which restricts the right to refresh memory to contemporaneous memoranda or writing. This exception is said to arise when a party is surprised by the unexpectedly adverse testimony of his own witness, in which case he may, for the purpose of refreshing the memory of the witness, be permitted to ask him as to any prior statements, whether oral or written, without reference to their contemporaneousness. The error of this conclusion, as we shall hereafter demonstrate, originally arose from a misconception of the doctrine laid down in *Wright vs. Beckett*, or *Melhuish vs. Collier*, *infra*, and has been continued by merely following this first departure from correct principles.” And thereupon the Court proceeds, at great length, to show how and to what extent the misconception of general principles had led to the adoption of an erroneous rule

in certain jurisdictions. In closing its review of the cases approving a practice similar to that followed in this case, the Court said: "Indeed, if the principles upon which these cases necessarily rest are pushed to their logical conclusion, they not only, under the guise of an exception, overthrow the general rule as to refreshing memory, but also subvert the [255—12] elementary principles of judicial evidence. The fact that these consequences are the legitimate and necessary outcome of the cases we have reviewed depends not on mere abstract reasoning, but is demonstrated by the case of *People vs. Kelley*, 113 N. Y. 647, 651 (1889). In that case, on the sole authority of *Bullard vs. Pearsall*, it was held that where inconsistent or adverse statements had not been given by a witness for the State, but, from mere forgetfulness or a wish to befriend the accused, the witness had omitted to testify to certain details, error had not been committed by the Court in allowing the prosecuting attorney, for the purpose of refreshing the recollection of the witness, to inquire of him whether he had not testified to the omitted facts before the committing magistrate and grand jury, and, upon his admission that he had done so, to ask him if the statements theretofore made were not true, and that the affirmative reply of the witness was competent evidence to submit to the jury. Not only the error but the grave consequences to result from such a doctrine were aptly pointed out by Chief Justice Shaw in *Commonwealth vs. Phelps*, 11 Gray, 73, where an attempt was made to refresh the memory of a witness by reference to testimony before a grand

jury not contemporaneously given. The Chief Justice said:

“ ‘It is not a regular mode of assisting the recollection of a witness to recur to his recollection of his testimony before the grand jury. If it was not true then, it is not true now; if it was true then, it is true now, and can be testified to as a fact. Of what importance is the fact that he had a memorandum to aid him in testifying before the grand jury? To ask what he testified to before the grand jury has no tendency to refresh his memory. The fact of his having testified to it then is not testimony now. It is an attempt to substitute former for present testimony.’ ”

“Equally lucid and cogent are the expressions of the [256—13] Supreme Court of Pennsylvania in *Velott vs. Lewis*, 102 Penn. St. 326, where, in holding that the memory of a witness could not be refreshed by reading to him notes of testimony given by him in a former trial of the same cause, the Court said (p. 333): If the fact that ‘a witness failed to recollect what he had previously sworn to were enough to admit the notes of a former trial, we might as well abandon original testimony altogether, and supply it with previous notes and depositions.’ ”

FINAL PROOF PAPERS AS EVIDENCE.

A large number of exhibits were offered in evidence by the Government, many of which are the statements of the entrymen and their witnesses made at the time of final proof. These latter papers were received over the objection of counsel for the defendants, who insist that under the rule laid down in the

case of *United States vs. Williamson*, 207 U. S. 425, they are incompetent and immaterial for any purpose. Speaking for the Court in that case, Mr. Justice White, said:

“As, then, there was no requirement concerning the making in the final proof of an affidavit as to the particulars referred to, and as the entryman who had complied with the preliminary requirements was under no obligation to make such an affidavit and had full power to dispose *ad interim* of his claim upon the final issue of patent, we think the motive of the applicant at the time of the final proof was irrelevant, even under the broad rule which we have previously in this case applied, and therefore that error was committed not alone in instructing the jury that the indictment covered or could cover the procurement of perjury in connection with the final proof, and that the jury might base a conviction thereon, but in admitting the final proof as evidence tending to show the alleged illegal purpose in the primary application for the purchase of [257—14] the lands.”

While it is not thought that in conforming to this ruling it is necessary to hold that final proof papers could not, in cases like these, under any circumstances become material for any purpose whatsoever, the purposes for which they can be received are necessarily limited and special. Apparently the principal object in offering them here was to show that many of the entrymen made false statements at final proof touching the sources from which they had procured the funds with which to pay for the land, and the length of time they had had such funds in their pos-

session. It seems that there prevailed in the community the belief that an entryman could not properly pay the Government price of lands with borrowed money, and in a large number of cases the statements made upon this subject by the entrymen, in answer to interrogatories put to them, were flagrantly false. The immorality of such perversions of the truth is, of course, much to be deplored, but the question here is whether or not the deception constitutes actionable fraud or tends to prove the existence of such fraud. Under the circumstances of the case, and in view of the prevalent understanding that the officers of the land department would not accept borrowed money, there is no room for the inference that because the entryman perverted the truth in this particular he also falsified the facts in some other particular. Nor is it thought that the deception constitutes actionable fraud; the plaintiff was not thereby misled to its injury. At section 890 of Pomeroy's Equity Jurisprudence (Vol. 2, 3rd Ed.), the learned author says:

“The misrepresentations must, however, be concerning something really material. Statements, although false, respecting matters utterly trifling, which cannot affect the value or character of the subject matter, so that if the truth had been known the party would not probably have altered his conduct, are [258—15] not an occasion for the interposition of equity.”

And at section 898 of the same text, it is said: “The last element of a misrepresentation, in order that it may be the ground for relief, affirmative or de-

fensive, in equity or at law, is its materiality. The statement of facts of which it consists must not only be relied upon as an inducement to some action, but it must also be so material to the interests of the party thus relying and acting upon it that he is pecuniarily prejudiced by its falsity, he is placed in a worse position than he otherwise would have been."

It is not here pretended that under the law it is material whether the entryman borrows the money with which he makes final proof, provided it belongs to him at the time he tenders it in payment at the land office. There being no other objection to the entry, the officers of the land department are bound to accept it and issue the patent. Aside from the popular belief or fear already adverted to, there is no ground for the inference that the officers of the land department would, in violation of the law, have declined to issue patent to any one of the entrymen named in the bills of complaint, even if they had know that the purchase price was paid with borrowed funds, and that therefore the statements of the entrymen in that respect was untrue. There is no evidence that, as a matter of fact, such views were entertained by the land department, or that it was the practice to decline to receive in payment money which had been borrowed. But whatever the practice may have been, as a matter of law it is immaterial whether the money was borrowed or not, and, that being true, the deception related to an immaterial matter, and therefore does not constitute actionable fraud. To take any other view would be to hold that a patent which in reality the entryman

was entitled to receive should now be set aside merely because [259—16] he practiced deception as to a fact upon which his right in no wise depended. Under the law any citizen, either native born or naturalized, is qualified to make an entry under the timber and stone act. Suppose that an entryman, in response to an inquiry by the officers of the land department, states that he is native born, when, as a matter of fact, he is a naturalized citizen; clearly such misrepresentation could not be assigned as a sufficient ground for the cancellation of the patent, for the very good reason that it was wholly immaterial whether the entryman is native born or naturalized, provided he is a citizen of the United States. So, it being immaterial whether the money tendered by the entryman has been borrowed or has been acquired in some other way, his misrepresentations relative thereto do not serve as a substantive ground for the cancellation of patent. In this view doubtless many of the final proof papers offered in evidence are without evidentiary value; others may be considered as a part of the *res gestae*, and as throwing some light upon the questions at issue. It is, however, not thought necessary in detail to consider and pass upon the objections thereto, for no substantial prejudice can result to the defendants by permitting them to remain in the record.

FALSE STATEMENTS IN PRELIMINARY APPLICATIONS.

During the course of the hearing before the special examiner it incidentally appeared that in one instance the patentee was not a citizen of the United

States at the time he made his application, and that several entrymen falsely stated under oath in their preliminary applications that they had personally visited the land prior to the time they presented their applications. These facts are not pleaded by the Government as reasons for cancelling the patent, nor, in the argument, have they been assigned as a basis for any affirmative [260—17] relief. Apparently the entryman who was not a citizen, in good faith believed that he was a citizen at the time he made his entry. Concerning the entries made by those who had not personally visited the lands prior to the initiation of the entries, it is to be said that they are all embraced within the group in which Robnett was interested, and it is found from the evidence that no one of the defendants now holding title to or having any interest in such lands had knowledge at the time of acquiring such interest or title of the falsity of the entryman's preliminary statement. In view of these conditions, it is unnecessary to consider what effect, if any, should be given to a false representation of this character in a suit against the entryman to cancel a patent where such misrepresentation is pleaded as a substantive ground for affirmative relief. In *United States vs. Robnett* (C. C. A. 9th Circuit), 169 Fed. 778, it was held that such a false statement, even though wilfully made, does not constitute perjury, for the reason that it is not within the requirements of the statute.

CERTAIN PRINCIPLES OF LAW.

While no authoritative decision can be found comprehensively applicable to the great variety of cir-

cumstances under which the entries herein involved were made and the lands were alienated by the entrymen, in most of its features the scope and meaning of the Timber and Stone Act are no longer in doubt. In the case of *United States vs. Budd*, 144 U. S. 154, it was held that "The act does not in any respect limit the dominion which the purchaser has over the land after its purchase from the Government, or restrict in the slightest his power of alienation. All that it denounces is a prior agreement, the acting for another in the purchase. If, when the title passes from the Government, no one save the purchaser has any claim upon it or [261—18] any contract or agreement for it, the act is satisfied. (A contemplating purchaser) might rightfully go or send into a vicinity and make known generally or to individuals a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the Government; and any person knowing of that offer might rightfully go to the land office and make application and purchase a timber tract from the Government."

In *United States vs. Williamson*, 207 U. S. 425, it was held that "If an applicant has, in good faith, complied with the requirements of the second section of the act, and, pending the publication of notice, has contracted to convey after patent his rights in the land, his so doing could (not) operate to forfeit his right." That is to say, after the initiation of the entry and before final proof, it is competent for the entryman to contract to make a transfer of the land after he shall have acquired title.

Recently the Circuit Court of Appeals of this circuit, in deciding the case of *United States vs. Barber Lumber Company, and others* (opinion filed February 19, 1912), wherein issues were involved very similar to those presented in the case at bar, used the following language:

“The decision of the present case is ruled by the legal principles announced in the Budd case and in the Clark case. Those decisions are authority for the proposition that a person or corporation desiring to acquire title to a large body of timber lands of the United States under the Timber and Stone Act, may express that desire to another, and may enter into an agreement with him to buy the lands upon his obtaining title thereto; may loan him the money with which to acquire title, and may inspect and select the lands, and that such person or corporation is not bound to inquire into the method by which the other [262—19] party to the contract acquires title, and is not chargeable with knowledge of any fraud upon the land laws that he may resort to, and that, in taking titles based upon the issuance of final receiver’s receipts to the entryman without actual knowledge of such fraud or of facts sufficient to put one upon inquiry, such person or corporation is an innocent purchaser of the lands.”

In *Hasemann vs. Groff*, 199 U. S. 342, there was involved the validity of an agreement relating to what is popularly known as a pre-emption claim, entered under the provisions of section 2262 of the Revised Statutes of the United States. As will be seen upon a reference to this section, the pre-emp-

tioner was required to take an oath in all substantial respects identical with that required of an entryman under the Timber and Stone Act, that is, he was required to state under oath that he did not make the entry on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not, directly or indirectly, made any agreement or contract by which the title which he might acquire should inure in whole or in part to the benefit of any person other than himself. It was held that an agreement in writing between the pre-emptioner and third parties by which, in consideration of the payment by such third parties of one-fourth of the expenses of procuring title to a specified tract of public land under the pre-emption law, the entryman was to give to such third parties one-fourth part of the price and proceeds that might be obtained for the sale of the land after he had obtained title thereto from the United States, upon finding a purchaser therefor and making a sale thereof at a proper value, was not obnoxious to the law, or inconsistent with the obligations of the oath referred to. Applying such a construction to the Timber and Stone Act, it may be doubted whether in the case of several of the entries procured by [263—20] Robnett the understanding had between him and the entryman, even if his version of such understanding were accepted without qualification, should be held to be in contravention of the law.

RIGHTS OF INNOCENT PURCHASERS.

IN *United States vs. Detroit Lumber Company*, 200 U. S. 321, it is held that, "In passing upon trans-

actions between the Government and its vendees we must bear in mind the general principles of equity, and determine rights upon those principles, except as they are limited by special statutory provisions. And clearly upon those principles a party purchasing an equitable right is entitled to be protected in his purchase so far as it can be done without trespassing upon the rights of others."

And it is further said: "A patent from the United States operates to transfer the title not merely from the date of the patent, but from the inception of the equitable right upon which it is based. *Shepley vs. Cowan*, 91 U. S. 330. Indeed, this is generally true in case of the merging of an equitable right into a legal title. Although the patents in this case were not issued until after the sales of the timber, yet when issued they became operative as of the date of the original entries." And it was accordingly held that one who in good faith and for value purchases from an entryman, after the issuance of final receipt and before patent, is, in a suit commenced by the Government after the issuance of patent, entitled to the protection usually accorded to innocent purchasers for value. See, also, *United States vs. Clark*, 200 U. S. 601; *United States vs. Barber Lumber Co.*, *supra*.

MEASURE OF PROOF.

It is familiar law that something more than a bare preponderance of the evidence is required before affirmative [264—21] relief can be granted to the complainant in actions of this character. In the *Maxwell Land Grant* case, 121 U. S. 325, it is au-

thoritatively declared that to annul a patent and destroy the title claimed thereunder, "the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court." And further that: "In this class of cases the respect due a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of the stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by the proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

GENERAL FINDINGS OF FACT.

From a consideration of all of the evidence, it is found as a fact that during the period covered by the record the defendants W. F. Kettenbach and George H. Kester, respectively the president and cashier of the Lewiston National Bank, were asso-

ciated together in the acquisition of timber lands in the vicinity of Lewiston, Idaho, where they resided. [265—22] Some of the lands acquired by them they purchased jointly, both of them being named as grantees in the instruments of conveyance; and others were acquired by Kettenbach in his own name and in his own right, and still others were purchased by Kester individually. In their joint enterprise each recognized the other as having authority to act for both.

The defendant Dwyer was a timber cruiser and locator, and figures prominently in the transactions disclosed by the record, in various capacities. During much of the time covered by the record he was employed by the defendants Kettenbach and Kester, at a fixed salary, or upon a commission, or both, to render services of different kinds, and during the same time he acted independently, or upon his own account, in various ways. He himself acquired title to several different tracts of timber lands for his wife Kittie E. Dwyer, or in her name. He had no joint or partnership interest with the defendants Kettenbach and Kester, or either of them, in the lands which they purchased; and in the lands taken in the name of Kittie E. Dwyer it is found that neither Kester nor Kettenbach had any interest. In one project Dwyer was to have a joint or partnership interest with the defendants Kester and Kettenbach, but that related not to the public lands of the United States, but to State lands, which the defendants planned to purchase from the State of Idaho. There is some testimony to the effect that the

three defendants, Kester, Kettenbach and Dwyer, were jointly interested in the acquisition of title to the lands herein involved, but upon consideration of all the facts and circumstances it is thought that the preponderance of the evidence is against such theory.

It is further found that at no time during the period covered was there any associational arrangement either by way of partnership or joint ownership, or otherwise, between these three defendants, or any one of them, and the defendant Robnett, [266—23] in the acquisition of the title to any of the lands involved. There is practically no evidence to support such a theory. True, Robnett was instrumental in securing the entry of a number of tracts, title to some of which passed to the defendants Kester and Kettenbach, or one of them. In such transactions, however, there was no community of interest existing between Robnett and the purchasers. Their actual relations will be considered in connection with the discussion of the specific entries.

THE SPECIFIC ENTRIES OR CLAIMS.

We pass, now, to a brief consideration of the specific entries or claims, and such discussion only is indulged in as seems to be necessary to indicate the reasons for the conclusion reached. Certain claims may be summarily disposed of by the mere statement that there is no substantial evidence at all in support of the contention that the entrymen violated any provision of law in acquiring their titles. Such are the entries of JOHN W. KILLINGER, WILLIAM E. HELKENBERG, FRED E. JUSTICE,

WILLIAM HAEVERNICK, ALMA HAEVERNICK, GEORGE W. HARRINGTON, and GEARY VANARTSDALEN. And as to certain other claims the evidence goes little further than to suggest a suspicion of invalidity, based largely upon the intimate relations existing between the several entrymen and the defendants Kettenbach and Kester. The evidence is wholly insufficient to warrant a cancellation of the patents. Such are the claims of EDNA P. KESTER, ELIZABETH KETTENBACH, WILLIAM J. WHITE, ELIZABETH WHITE, MAMIE P. WHITE, and MARTHA E. HALLETT.

In the case of three other claims, namely, those of IVAN R. CORNELL, ROWLAND A. LAMBDIN, and FRED W. SHAEFFER, it is conceded by the Government that prior to the commencement of the suits the title had, for a valuable consideration, passed to and is now held by an innocent purchaser, and that [267—24] therefore no equitable relief can properly be granted. In view of such concession the validity or invalidity of the original entries need not be discussed, and the evidence relative thereto has been considered only in so far as it bears upon the validity of other controverted entries.

THE EMORY-COLBY GROUP.

Six entries, namely, those of LON E. BISHOP, FREDERICK W. NEWMAN, CHARLES DENT, CHARLES SMITH, JAMES C. EVANS, and JOSEPH B. CLUTE, are, in the record, referred to as the "Emory-Colby Group," because the witnesses Fred Emory and C. W. Colby rendered some assist-

ance to the entrymen in procuring the requisite funds, and later in negotiating the sale of the lands to the defendants Kettenbach and Kester. There is no contention that Kettenbach and Kester had anything to do with the entries until about the time of final proof, when, at the solicitation of Colby, they agreed to advance the money, and thereafter, closely following the final proof, they purchased the claims; it is obvious therefore that they could not have had any unlawful agreements with the entrymen. The theory of the Government, however, is that such agreements had been entered into with Emory and Colby, or one of them, and that the defendants were advised of such agreements before they purchased the lands. Aside from the testimony of Robnett, there is no direct or positive proof that any one of the claims was invalid, and while the conditions surrounding the transfer are of such a nature as to warrant a close scrutiny of the claims, the circumstances are quite as readily reconcilable with the theory of the lawfulness as with the theory of the unlawfulness of the relations existing between the several entrymen and Emory and Colby. It is conclusively [268—25] shown, I think, that in material respects Robnett's account of what occurred in the bank is incorrect, and I am convinced that the witness Colby truly states how Kettenbach and Kester came to purchase the claims. Upon the whole, it is thought that the evidence is insufficient to warrant a cancellation of any one of these patents.

ENTRY OF GUY L. WILSON.

This entry was made April 25, 1904, passed to final

proof July 13, 1904, and the lands embraced therein were conveyed to the defendants Kettenbach and Kester on July 13, 1904, who mortgaged the same to the Idaho Trust Company on July 6, 1907. The deed of transfer to Kettenbach and Kester was not recorded until June 24, 1907. I am satisfied from the testimony of the entrymen, reluctantly given, that, while there was no express agreement, there was a perfect understanding between him and the defendant Dwyer, acting as the agent for Kester and Kettenbach, that all expenses incident to the acquisition of title should be paid by Dwyer, and that the entryman was to receive \$150.00, in consideration of which he was, upon acquiring title, to convey the same to Kester and Kettenbach. It is not necessary to decide whether or not Kester and Kettenbach had any actual knowledge of the arrangement with Dwyer; Dwyer being their agent, they are charged with notice. Nor is it thought that the Idaho Trust Company stands in the position of an innocent purchaser. Its chief officer, the defendant Frank W. Kettenbach, is an uncle of William F. Kettenbach, and was upon friendly, if not intimate, terms not only with W. F. Kettenbach, but with Kester, Dwyer and Robnett. Prior to the time the trust deed or mortgage was taken, the validity of this entry had been called into question by indictments filed in this court, and by criminal trials at a comparatively short distance from Lewiston, where the Trust Company was engaged in business, the [269—26] trials resulting in the conviction of Robnett, Dwyer, Kester and William F. Kettenbach. The trials at-

tracted wide attention, and it is hardly conceivable that, under the circumstances, the officers of the Trust Company were ignorant of the fact that the validity of this entry was being assailed by the Government. Taking into consideration all of the circumstances, including the relation of the parties, I think it must be held that the facts were sufficient to put the Trust Company upon inquiry, and that it took the title at its peril. It is therefore held that the patent should be cancelled.

ENTRY OF FRANCES E. JUSTICE.

In many particulars the conditions under which this entry was made are very similar to those of the entry of Guy L. Wilson. The entrywoman is the mother-in-law of Wilson, and both entries were made upon the same day, that is, on April 25, 1904, and passed to final proof the same day, that is, on July 13, 1904. In this case the entrywoman did not execute a formal conveyance until March 30, 1906, at which time a transfer was made to Kittie E. Dwyer. The money with which all of the expenses of acquiring title, including the purchase price of the land, were paid, was borrowed through Dwyer, and a note was executed to cover the same on the day of final proof. Immediately after making final proof the entrywoman turned over to Dwyer the final receipt, and the note, which was in the Lewiston National Bank, was returned to her, apparently as a matter of course. While the evidence of a prior agreement is not so conclusive as that in relation to the Wilson entry, I am satisfied from all of the facts and circumstances, including the attitude and con-

duct of the entrywoman herself, and the failure of the interested parties to explain certain incidents exclusively within their knowledge, that the entry was [270—27] initiated with an understanding between the entrywoman and Dwyer that she should receive a specified amount, free of all expenses, and should convey the title to or in compliance with the demands of Dwyer. The patent in this entry is therefore held for cancellation.

ENTRY OF ROBERT O. WALDMAN.

This entry was made on March 6, 1903, final certificate issued May 25, 1903, and patent August 3, 1904. Immediately upon making final proof the entryman deeded to Robnett, and thereafter, at the time Robnett left the employ of the Lewiston National Bank, he executed a deed to Elizabeth White, dated July 8, 1907, and upon October 25, 1907, Elizabeth White, by a quitclaim deed, and Robnett by a similar instrument, transferred their several interests to the Lewiston National Bank. While the entryman and Robnett do not in all respects agree as to the details of the arrangement under which the land was entered, the effect of the testimony of either one is to render the entry invalid. It is clear, I think, that it was understood before the entry was initiated that Waldman was to realize \$400.00 in excess of his expenses in making the entry, and whether the understanding was technically that he should sell his right for \$400.00, or that he was to execute a deed and place it in escrow, to be delivered upon his receiving a net profit of \$400.00, is immaterial; one agreement would be quite as illegal as

the other. There is no evidence touching the regularity of the entry other than that of Robnett, and Waldman himself, and the substance of what they testify to is not out of harmony with the other circumstances of the case. I have no hesitation, therefore, in concluding that the entry was invalid, and the only question remaining is as to whether or not the Lewiston National Bank is an innocent purchaser for value. Robnett testifies that he advised W. F. Kettenbach and the defendant Kester of his [271—28] arrangement, and also, just before he made the transfer to Elizabeth White, he advised Frank W. Kettenbach, who had recently become the president of the bank, of the arrangement he had with the entryman. His testimony as to notice to the bank of the invalidity of the claim is denied by Kester and both the Kettenbachs, and perhaps should not be credited. However, the transfers by Robnett were made after the trial of certain criminal cases in this court in the fall of 1906, in which the defendants Robnett and Dwyer were defendants, resulting in convictions for subornation of perjury, and in the spring of 1907, in which the defendants Kester, Dwyer and W. F. Kettenbach were defendants, resulting in convictions for conspiracy to defraud. During the course of the trial of those cases certain of the entries herein involved were put in question, and evidence touching their validity was given. One of the claims was the one now under consideration, and at the trial the entryman was called as a witness, and gave testimony substantially the same as that now given by him. By reason of

the prominence of the defendants, and of certain other features of the case, the trials attracted general attention, and were given wide publicity, and I think, even if Robnett's testimony as to advising the officers of the bank of the facts connected with the entry is rejected, as perhaps it should be, there was sufficient known to the various officers of the bank to put them upon their inquiry, and had they made reasonable inquiry they would have found that, according to the entryman's testimony at least, the title to this tract of land had been secured through fraud. It is not of vital importance that the officers may not have believed that the claim was invalid. It is enough to say that they must have known that the validity of the claim was in question, and they must have known that the Government contended that the title was invalid. If, [272—29] knowing these facts, the bank took a transfer, it acted at its peril; it cannot claim protection as an innocent purchaser. It is accordingly held that the patent to this claim should be set aside.

CLAIM OF WILLIAM B. BENTON.

The entry was made August 27, 1902, and final certificate issued November 21, 1902, and patent February 25, 1904. By deed acknowledged January 10, 1903, reciting a consideration of \$1600.00, the entryman conveyed to the defendant Robnett. On July 8, 1907, Robnett conveyed to Elizabeth White, and on September 4th of the same year Elizabeth White conveyed to the Clearwater Timber Company. In substance Robnett testifies that he (Robnett) was to furnish the money to pay the expenses incident to

the entry, and that Benton was to file and prove up, and when the claim was sold the net profits were to be divided. He (Robnett) was to "control the disposition" of the land. It will be observed that the claim was deeded to Robnett shortly after final proof, and that he held it approximately four years before disposing of it. There is no explanation as to how he was to control the sale of the land, or, if he did not pay outright for it when he purchased it, how Benton was protected, and indeed the testimony is very meager as to the details of the transaction. Upon the other hand, Benton, who was placed upon the witness-stand by the defendants, positively denied that he had any such arrangement as Robnett testified to. His version of the transaction is that Robnett was to furnish to him what money he lacked at the time of making the entry, which he (Benton) was to repay. He testifies that he gave Robnett his note, which was to be paid back when the claim was sold. The note was originally given for \$250.00, or \$260.00, and was [273—30] renewed. He testifies that he got in the neighborhood of \$1675.00 or \$1690.00 for the claim. It does not appear that Kettenbach or Kester had any interest in the claim, and Kester seems to have had no connection at all with any transaction relating thereto. The defendant Kettenbach, who had charge of certain funds belonging to his wife's mother, Elizabeth White, purchased the claim from Robnett in July, 1907, taking a deed in Mrs. White's name, and later the lands were sold, together with others, by Mrs. White to the Clearwater Timber Company. Robnett gives as the reason for

transferring the claim to Mrs. White that Kettenbach told him that the Clearwater Timber Company would not purchase any claim directly from Robnett, but that a sale could be made to the company if the lands belonged to Mrs. White, and for that reason Robnett made the transfer. Upon the other hand, Kettenbach testifies that at the time the transfer was made to Mrs. White, Robnett was leaving the service of the bank, and, as Kettenbach puts it, was "leaning" pretty heavily upon Kettenbach. He further testifies that Robnett had some timber claims that he was trying to dispose of, but being unable so to do appealed to Kettenbach to assist him, and, for the purpose of enabling him to sell the lands for Robnett, the transfer was made to Mrs. White, who later transferred to the Clearwater Timber Company. Robnett testifies that he told Kettenbach all about his illegal arrangements with Benton. This is denied by Kettenbach. No reason is given by Robnett why, when he was endeavoring to sell the land, he should have disclosed facts invalidating the title, and it would seem quite irrational for a vendor voluntarily and needlessly to make known the existence of facts which, if true would disclose the invalidity of the title which he is trying to sell. To hold the entry invalid, Benton's testimony must be rejected, and Robnett's believed. Benton is Kettenbach's [274—31] cousin, and it may be assumed that if he had an illegal contract he would be in a general way interested in concealing the facts, but whatever may be the indirect interest of Benton and Kettenbach in the result of the litigation, I think it must be held

that in the absence of circumstances tending to make Robnett's story more probable than theirs, the evidence is insufficient to warrant a cancellation of the patent.

THE HATTIE ROWLAND CLAIM.

This entry was made by Hattie Rowland on April 25, 1904, and patent issued December 31, 1904. The land was deeded to the defendant Kittie E. Dwyer on April 9, 1906. Hattie Rowland herself did not testify, and there is very little direct evidence relating to the claim. Both of the defendants, Kester and Kettenbach, disclaim any knowledge of or interest in the entry. The defendant Dwyer acted as locator, and later bought the claim for his wife, Kittie E. Dwyer. It is suggested that while the lands were assessed to Hattie Rowland during the year 1907, the taxes were paid by Kester and Kettenbach, but there is little significance in the circumstances. It is known that taxes are very frequently paid upon behalf of the owner by agents or friends, and in this case it seems that for the year 1905 the taxes were paid by the Lewiston Abstract Company, although the land was assessed to Hattie Rowland, and during the year 1906, while the assessment was in the name of Hattie Rowland, the taxes were paid by Kittie E. Dwyer. In the years 1908 and 1909 the taxes were assessed to and paid by Kittie E. Dwyer. In 1909 the assessment was in the name of Kittie E. Dwyer, but the taxes were paid by the Idaho Trust Company. The Government also relies upon the fact that these lands were noted upon plats prepared by the defendant William Dwyer for Kester and

Kettenbach, and delivered by him to a representative of the Shevlin-Clark [275—32] Timber Company, in February, 1906, in connection with a proposal made by the defendant Kester upon behalf of himself and his associate Kettenbach to sell certain timber lands. Certain lands upon these plats were marked with an X, and certain other lands with a circle, and these lands, together with others, were marked with a circle X ⊗. Upon the plat is a notation to the effect that the X indicates lands of Kester and Kettenbach, while the circle indicates land belonging to individuals. There is no notation as to the class of lands designated by circle X ⊗. Under all the circumstances disclosed by the record, it is not thought that much significance can be attached to this piece of evidence alone. The plats were apparently prepared hastily, and were clearly erroneous in some respects. There was no necessity at the time for being entirely accurate as to the ownership of lands or the precise status of the title. The deed from Rowland to Dwyer was executed a short time after these plats were prepared, and it is entirely possible that the defendant Dwyer at the time had arranged for or knew that he could secure the lands, and it is abundantly shown that in proposing the sale of timber lands it was to the advantage of those desiring to sell to make it appear to the contemplating purchaser that there was a large compact body of timber lands available. In other words, if the defendants desired to sell their holdings it was to their interest to make it appear that all of the lands, or at least a large body of land, in the

vicinity could be purchased.

Another circumstance relied upon is the inclusion of the name of the entrywoman in a group of names, and endorsed in the handwriting of the defendant Kettenbach, upon a deposit slip, dated April 26, 1904, but while the slip, with its endorsements, may present a suspicious circumstance, it is not thought that either it or all of the evidence taken together [276—33] is sufficient to warrant a finding that the patent was procured by fraud, or that any one of the defendants acquired any interest in, or had any control over, the claim prior to final proof.

CLAIM OF WILLIAM McMILLAN.

This claim was entered April 25, 1904, final proof was made July 18, 1904, and the land was deeded to the defendant Kittie E. Dwyer April 9, 1906. It will be observed that the dates correspond to the dates of the Hattie Rowland claim, and in all substantial respects the evidence relative to the two claims is very similar, with the exception that McMillan himself testified as to the circumstances surrounding the entry and transfer of his claim. The lands were noted upon the plats furnished to Shevlin & Clark, and the name of McMillan appears upon the deposit slip the same as in the case of Hattie Rowland. In 1905 the taxes were assessed to McMillan and paid by the Lewiston Abstract Company. In 1906 and 1907 they were assessed to McMillan and paid by Kester and Kettenbach. In 1908 they were assessed to Kittie E. Dwyer and paid by her. In 1909 they were assessed to Kittie E. Dwyer and paid by the Idaho Trust Company. In 1910 they were assessed to

Kittie E. Dwyer. Dwyer located the entryman and later purchased the land for his wife, or in his wife's name. The defendant Kettenbach seems to have had nothing at all to do with the entry. The matter of making such an entry was first talked over between Kester and the entryman at the latter's home out in the country. There was some sort of a general promise by Kester, who seems to have been very friendly to the entryman, to give him assistance if he needed financial help when it came to making his final proof. A careful consideration of the entryman's testimony convinces me that he did not have any understanding, express or implied, by which he was to [277—34] sell the land to any person, and that no other person had any interest in the entry. The entryman apparently did feel under some moral obligation to give to the defendant Kester an opportunity to purchase, but such obligation involved only a recognition by the entryman that Kester favored him by loaning him a part of the money required for the final proof.

THE PEARL WASHBURN CLAIM.

This claim was initiated January 19, 1903, final proof was made April 16, 1903, and patent issued July 2, 1904. A mortgage upon the land was given on the day of final proof to the defendant Kettenbach, and recorded two days later. The entrywoman held the land about three years, and then, on May 23, 1906, deeded the same to one McGrane. McGrane deeded to Chapman on May 8, 1907, and Chapman deeded to the Clearwater Timber Company on June 7, 1907. The entrywoman did not testify,

and I find in the record little, if any, circumstantial evidence tending to impeach the validity of the claim.

CLAIM OF BENJAMIN F. BASHOR.

This claim was entered May 21, 1903, and passed to final proof on June 17, 1903, patent issuing August 3, 1904. A mortgage was given to the defendant Robnett on the day of final proof, and recorded three days later, at the request of the defendant Kettenbach. The entryman transferred the land to the defendant Kettenbach by deed in April, 1906, the same being recorded at the request of the Lewiston National Bank April 21, 1906. I find that the defendant Kester knew nothing about the entry, and never had any interest in the land embraced therein. [278—35] For the circumstances surrounding the entry we are dependent almost entirely upon the testimony of the entryman and of the defendant Robnett. The entryman was at the time the assessor and tax collector of Nez Perce County. Robnett's testimony is to the effect that there was some general understanding that he (Robnett) would make provision for the necessary funds with which to secure title, and that he was to sell the land, and that the entryman was to realize from \$200.00 to \$250.00 net out of the transaction, and that Robnett was to have any surplus remaining out of the proceeds of the sale, after paying the entryman that amount. Even if it were deemed proper to give credence to the uncorroborated testimony of Robnett, and if it were not in conflict with that of the entryman, the testimony is not very clear or convincing as to just what

the arrangement was. If Robnett was to receive the surplus it would seem necessary to have some understanding as to the specific amount which the entryman was to realize; otherwise a dispute would arise after the sale was made as to how much the entryman was entitled to. But according to Robnett's testimony the net amount which the entryman was entitled to realize was left indefinite and uncertain. From the testimony of the entryman himself it is quite clear that he did not understand the arrangement to be such as related by Robnett. He held the claim for some time, and apparently acted upon the assumption that he had a right to convey to the one who would give him the highest price. He sold to Kettenbach because Kettenbach offered him a little more than he was offered by other persons. He realized no substantial profit from the transaction.

While the validity of this claim is not entirely free from doubt, from the evidence bearing directly upon the claim and from other facts and circumstances disclosed by the record, it is concluded that the actual facts are that Robnett [279—36] encouraged the entryman to take up a timber claim, with no specific understanding or agreement that he (Robnett) should have any interest in or control over the claim. It may very well have been expected from what was said and done that Robnett would not only assist the entryman in procuring the necessary funds, but would actively engage in an effort to sell the claim for the entryman after proof was made, the whole transaction being for the ben-

efit of both parties. Robnett would at least get a fee or a part of the fee of a locator, and there would be the further possible advantage to him of a commission or some sort of an interest in the proceeds of the sale of the land if he were successful in assembling and selling a considerable body of timber land. Clearly Robnett was not working in co-operation with, or for the interests of, the other defendants, and it is not easy to see why he would have insisted upon absolute control of the title. He was risking nothing. The money which was furnished to enable the entry man to make proof and pay his expenses did not belong to Robnett, and by procuring the entry to be made he was sure at least of a locator's fee, for he saw to it that the entryman borrowed enough money to cover not only the purchase price of the land, but the locator's fee and other incidental expenses. Moreover, there is no evidence, except that of Robnett himself, which is contradicted by the testimony of the defendant Kettenbach, that Kettenbach had any knowledge of the arrangement which he now testifies existed between him and the entryman. In other words, if it is held that Kettenbach is not an innocent purchaser, the finding must be based upon the uncorroborated testimony of Robnett, against the testimony of the defendant Kettenbach. Upon the whole, I feel impelled to find that the evidence sustains the charge neither of fraud in the entry nor of knowledge of any illegality in the entry on the part of the present owner, the defendant Kettenbach. [280—37]

CLAIM OF DANIEL W. GREENBURG.

The entry was initiated April 25, 1904, final proof was made July 15, 1904, and the patent issued December 31, 1904. The entryman conveyed to Kester and Kettenbach on August 15, 1904, by deed recorded January 24, 1906. There is little substantial proof tending to show fraud in the entry. The entryman was a newspaper reporter, and had in his own right a part of the necessary funds with which to acquire title. He borrowed about \$200.00 from the Lewiston National Bank, giving his note therefor, and transferred the land to Kester and Kettenbach about a month after final proof, for approximately \$1,100.00.

CLAIMS OF GEORGE MORRISON AND EDWARD M. HYDE.

The record upon these two claims is substantially the same. The entries were initiated March 30, 1903, final proof was made June 26, 1903, patents issued August 31, 1904, and the lands were deeded to Kester and Kettenbach June 26, 1903, the deeds being recorded August 10, 1903. Neither of the entrymen testified. Robnett had to do with both entries, and to substantiate the allegations of the bill the Government relies exclusively upon his testimony, both in relation to the charge of fraud in the entry and of bad faith of Kester and Kettenbach in purchasing from him. Kester disclaims all knowledge both of the entries and of the circumstances of the purchase, and Kettenbach denies having any knowledge of the circumstances of the entries or of any arrangement between Robnett

and the entrymen. It is therefore thought that the evidence is insufficient to warrant the cancellation of either entry. [281—38]

ENTRY OF WREN PIERCE.

This entry was made March 21, 1903, and final certificate issued June 17, 1903. Immediately after final proof the entryman executed a mortgage to the defendant Robnett, who transferred the same to the defendant Kettenbach. On May 31, 1904, Kettenbach purchased the claim, taking a deed from the entryman. The entryman was not produced as a witness. The defendant Kester apparently has never had any interest in the claim, and knows nothing about it. The charge of fraud in the entry rests upon Robnett's testimony alone, with substantially no corroborating circumstances. Robnett testifies that Kettenbach was advised of the alleged fraud before he made the purchase; this Kettenbach denies. It is thought the evidence is insufficient to warrant a cancellation of the patent.

ENTRY OF JOHN E. NELSON.

This entry was initiated February 24, 1903, passed to final proof May 22, 1903, and to patent August 3, 1904. The entryman executed a mortgage to Curtis Thatcher, who was acting as the agent for his mother, E. W. Thatcher, on May 22, 1903, for \$725.00. On May 18, 1908, the entryman executed a deed to E. W. Thatcher, reciting a consideration of \$1,060.00. The land was from time to time assessed to Nelson, and the taxes paid by the mortgagee. The Government relies almost entirely upon the testimony of the defendant Robnett. Here, as in the

case of some other entries, the testimony of this witness is not very clear as to just what the arrangement or understanding was. He testifies that he was to control the sale of the land after title was secured, but just how that control was to be exercised or what he was to get out of the transaction is not entirely clear. He testifies that his alleged illegal agreement with the entryman was made known to Thatcher. This Thatcher denies, and in material [282—39] respects the story told by the entryman is in conflict with the testimony of Robnett. Upon the whole, it is thought that the evidence is insufficient to warrant cancellation.

ENTRY OF VAN V. ROBERTSON.

This entry was made February 24, 1903, and passed to final proof May 20, 1903. Immediately after final proof the entryman executed a mortgage in favor of Robnett to secure a note for \$500.00. On September 27, 1904, the entryman executed a deed to the Lewiston National Bank. The testimony of Robnett as to the arrangement he had with the entryman is neither detailed nor clear. The defendant Kettenbach appears to have known nothing about the transaction, and the defendant Kester never had any interest in the entry. According to Robnett's testimony, he procured from the Lewiston National Bank, in which he was employed as bookkeeper, the funds with which to make the necessary advances to the entryman to pay the purchase price of the land, and immediately upon the execution of the note and mortgage the note was endorsed by Robnett and put in the bank, he (Robnett) taking credit

for the amount thereof. He testifies that Kester, who was cashier of the bank, knew of his alleged illegal agreement with the entryman; this Kester denies. It seems quite incredible that if Kester had been advised of facts disclosing the invalidity of the transaction he would have authorized or acquiesced in the use of the funds of the bank for any such purpose; apparently there was no personal interest in the transaction to blind him to the obligations of his trust. To be sure, friendly relations existed between Robnett and Kester, but so far as appears they were only such relations as might exist between young men who had grown up together, and had been associated by reason of a common employment. If Kester believed the title to be good, he might, out of regard [283—40] for Robnett, and to enable him to secure the location fee which accrued to Robnett out of the entry, have yielded to the latter's request for help, the peril under such conditions being very slight. But it is not easy to believe that, without hope of profit either to himself or to the bank, whose interests it was his duty to protect, Kester would have authorized the abstraction of \$500.00 of the bank's funds to be loaned upon real estate the title to which he was advised was invalid by reason of the fraud of the entryman. Upon the whole, it is thought the evidence is insufficient to warrant a cancellation of this patent.

ENTRY OF SOREN HANSEN.

This entry was made February 26, 1903, final certificate was issued June 5, 1903, and patent August 4, 1904. It seems that the entryman has made three

several deeds, one on February 7, 1906, one on May 16, 1908, and one on March 5, 1909, as a result of which it is not clear who is at present the real owner, but in the view I have taken of the evidence this feature is not of great importance. I am convinced that the entryman, who testified upon behalf of the Government, desired to be entirely frank, and stated the facts as he understood them and remembered them, and, according to his testimony, the entry should be held to be valid. Robnett's testimony touching this claim is very similar to that offered in relation to a great many other claims, and is, in material respects, in conflict with that of the entryman. [284—41]

ENTRY OF DRURY M. GAMMON.

This entry was initiated May 12, 1903, passed to final proof August 19, 1903, and to patent September 9, 1904. A deed was executed to Robnett October 9, 1903, and by Robnett a transfer was made to the Lewiston National Bank on November 25, 1904. The bank transferred to the Idaho Trust Company, the present holder of the legal title, January 8, 1910. The testimony of the entryman is extremely conflicting and unsatisfactory. In one breath he gives one version of the transaction, and in the next breath he states facts entirely irreconcilable therewith. Considering all of the testimony together, I am inclined to think that at the time the entry was initiated there existed between him and Robnett an unlawful understanding as to what disposition should be made of the claim when title was secured.

There remains the question whether or not the Lewiston National Bank, in taking a transfer, was an innocent purchaser, for value. Robnett's testimony is to the effect that he advised Kester, who was at the time cashier of the bank, of the unlawful arrangement between him and the entryman. This is denied by Kester, and he explains how it happened that the bank became the owner of the land. It is not seriously contended that Kester originally participated in the unlawful transaction between Robnett and the entryman, and apparently at the time he testified he had no interest in the result of the litigation so far as this entry is concerned. There are no general considerations, therefore, strongly tending to impeach or weaken his testimony, and in the absence of special reasons to the contrary I think credence must be given to his version of what occurred in preference to that of Robnett. It must therefore be held that the bank took the title without notice of its infirmity. [285—42]

CLAIM OF CARRIE D. MARIS.

This entry was made on July 15, 1902, and final receipt issued November 21, 1902. On June 2, 1903, the entrywoman conveyed by deed to Robnett, and on July 12, 1906, Robnett executed a deed to the defendants Kester and W. F. Kettenbach. I am inclined to give credit to the testimony of the entrywoman, and, according to that testimony, an agreement was entered into between Robnett and herself, before the entry was initiated, in violation of law, as a result of which the entry was invalid. The title is now in Kettenbach and Kester, and the remain-

ing question is whether or not they are innocent purchasers for value. It is not contended that either Kester or Kettenbach participated in the proceedings by which the title was procured from the Government. Robnett furnished the money to the entrywoman to make final proof, borrowing it from one Sullivan. It will be observed that Robnett held the title for practically three years before executing the deed to Kester and Kettenbach. Kettenbach personally had nothing to do with the purchase, and both Kettenbach and Kester deny Robnett's statements to the effect that they were advised of the arrangement between him and the entrywoman, under which the entry was made. In addition to the general considerations hereinbefore explained, tending to impeach and cast discredit upon the credibility of Robnett's testimony, it appears from the record that as late as July 1, 1909, he made an affidavit relative to this claim in which he expressly stated under oath that he had no agreement with the entrywoman prior to making final proof, and further, that Kester and Kettenbach knew nothing about the land or the acquisition of the title thereto for a long time after final proof. In his testimony given in the present case he leaves the impression that Kester wanted the claim, and that he sold to him as a favor, but it is abundantly shown by the testimony of the entrywoman that Robnett had made many efforts to sell the land, without success, [286—43] thus corroborating Kester's version of the transaction. Kester's testimony is to the effect that he knew nothing about the claim until one day, shortly before he pur-

chased it Robnett came to him at the bank, and, calling his attention to the claim, advised him that he had an offer of \$1,500.00, but that he had been holding the land for \$1,600.00; that he thought the claim was worth \$1,600.00, and wanted to know if Kester didn't desire to purchase it. Kester took the matter up with Dwyer, who went out and looked over the land, and reported that it was worth \$1,600.00, and thereupon Kester advised Robnett that he would take the land for \$1,600.00, and the transaction was closed upon that basis. As already stated, it is impossible to read the testimony of the entrywoman without being impressed with the fact that, for a long period of time before the sale to Kester and Kettenbach, Robnett had been making strenuous efforts to dispose of the land, but in vain. Apparently the highest offer he had ever received was \$1,500.00. Under these circumstances it seems quite incredible that he, as the owner of this land, and being anxious to sell it and get as much as possible for it, and having been unsuccessful in selling it to strangers, would go to Kester and Kettenbach and lay bare the facts disclosing the invalidity of the title, for the purpose of inducing them to pay \$100.00 more than he had ever been offered for the land. Only great simplicity of character together with a highly sensitive conscience would account for such an unusual proceeding, and it is hardly necessary to add that Robnett seems to have possessed neither of these qualities in a very high degree. In this particular case he does not appear to have had any scruples against deceptively withholding from the

unsophisticated entrywoman a portion of her share of the proceeds of the transaction. [287—44]

My conclusion is that Kester and Kettenbach were not aware of any illegal understanding or agreement between Robnett and the entrywoman, and the purchase was made by Kester in good faith, and for value, in the ordinary course of business.

CLAIMS OF FRANCIS M. LONG, BENJAMIN F. LONG AND JOHN H. LONG.

Francis M. Long, father, and Benjamin F. Long and John H. Long, his sons, made three several entries on March 26, 1903, and in each case final receipt was issued June 18, 1903. The three locations were made through Robnett, who also arranged for funds with which to pay for the lands. Benjamin F. Long knew very little personally about the arrangement, having depended upon his brother, John H. Long. It seems that Robnett, with the assistance of Knight and Benton, had found several claims, and was arranging to locate people thereon. He had some understanding with one Curtis Thatcher to loan the money to the entrymen, taking mortgages as security, and it is quite clear from various parts of the record that Thatcher was to have a bonus, as it was called, in addition to the interest specified in the note, as an inducement to him to make loans upon timber claims, the bonus in some cases amounting to as much as \$200.00 a claim. At page 1700 of the record, in speaking of the claim of John H. Little, Robnett testified to the effect that the money for the Little claim was to be furnished "by Curtis Thatcher, at that time, as he agreed to

make a number of loans on claims, ten in number.” And it is to be inferred that the Long claims were included in the ten thus referred to. W. F. Kettenbach, in explaining his connection with the so-called Robnett entries, and referring especially to the Little claim, states that, as he understood, Robnett had agreed to loan the money, but had apparently been disappointed in getting it from Thatcher, with whom Robnett had arrangements [288—45] made, Thatcher having failed him “at the eleventh hour.” Thereupon, according to Kettenbach’s testimony, Robnett came to him, and after he had looked over the estimates which Robnett had of the timber on the several claims Kettenbach furnished the money to enable the entrymen to make final proof. Kettenbach further testifies that he never knew anything about the claims until just at the time the entrymen had either proved up or were going to prove up. Kettenbach testifies: “Robnett first approached me on the proposition of letting the entrymen have the money, I think it was the day they proved up, or the day after, I am not sure; but they had either nine or eleven claimants that were wanting to borrow money for the lands, and I looked over the report on all of them and finally decided to take them” (that is, the loans). Apparently, in accordance with this arrangement or understanding, between W. F. Kettenbach and Robnett, upon the day of final proof, the necessary funds were procured by the Longs at the Lewiston National Bank, through Robnett, and each of the three entrymen executed a mortgage upon the day of final proof to secure a note

given to Robnett, two of the mortgages being each for the sum of \$728.75, and one for \$710.00. It is not entirely clear just what entered into the transaction to make up these several amounts. It required approximately \$400.00 to cover the purchase price of a claim, and Robnett was paid a location fee, and in addition to that apparently there was a bonus, and it is not improbable that the entrymen were required to give the note and mortgage for a sum considerably in excess of the money they actually procured. Whether this bonus went to Robnett or to Kettenbach, or was divided up between them, or just how it did figure in the transaction, is perhaps not of vital importance. Upon the execution of the notes and mortgages, the notes were endorsed by Robnett without recourse, and turned over to Kettenbach, the endorsement of the note, of course, carrying the mortgage with it. Thereupon, the mortgages were promptly filed for record by Kettenbach. [289—46] About a year later,—to be exact, on July 23, July 25, and August 9, 1904,—the entrymen executed their several deeds to Kettenbach, conveying to him the lands. Robnett seems to have had little, if anything, to do with the sale to Kettenbach. The entrymen apparently having concluded that they could not sell the lands for very much more than the mortgage indebtedness amounted to, decided to sell to Kettenbach if he would give them a small amount and cancel their notes and mortgages. This was agreed to by Kettenbach, and the deeds were executed accordingly and the mortgages satisfied.

It is not entirely clear from Robnett's testimony,

if that were given full credence, that the arrangement between him and these entrymen was in violation of law, and, taken in connection with all the other testimony, it is abundantly shown, I think, that the entrymen entered into no unlawful agreements or understandings. While the three entrymen differ as to some details, substantially all of them testify to about the same arrangement, and the testimony of John H. Long fairly illustrates that of the others. He says: "The proposition he (Robnett) made, as near as I can remember, was that he would locate me on a timber claim, and he would loan me the money with which to prove up with, and he would charge me \$125.00 for location fee, I believe, something like that, and I was to pay \$200.00, I believe, for the use of this money and the risk, as he explained it, in making this loan. I think he said he had no interest in it excepting that he must have a little bonus, as he called it, or something like that, to insure him a little something for his trouble and for the man that furnished the money." Later on, in response to an inquiry as to what he was to do with the land after final proof, he testified: "Well, there was nothing said as to what we was to do with it, any more than he said he might be able to sell it and realize about \$800.00 on it. [290—47]

"Q. Did he guarantee you so much? A. No, he said, 'I may sell it for \$800.00.'

"Q. Was he to have the right to sell it for you? A. No, not particularly; anybody had the right to sell it."

Kettenbach's explanation of his connection with

the transaction is corroborated by the testimony of both J. H. Long and B. F. Long, and I think it is clear that he simply loaned the money. The "bonus" feature of the transaction may be obnoxious to the usury laws of the State, but in no wise affects the validity of the entry. Under the circumstances, the fact that Robnett endorsed the notes without recourse is unimportant. It appears that some of the notes at least were later endorsed by Kettenbach in the same way. It is quite clear, I think, that the notes were taken in Robnett's name merely as a matter of convenience and for the use and benefit of Kettenbach, who was furnishing the money. The transaction was in no wise concealed. The mortgages were at once placed on record by Kettenbach. That Robnett did not have any control over the land or any interest in it appears from the undisputed fact that the entrymen made efforts to sell to timber purchasers, and entered into agreements to sell, independently of Robnett; and that there was no understanding originally that either Robnett or Kettenbach should become purchaser of the land, that is, that the mortgage was not merely a device for covering up a transaction of transfer, appears from the testimony of J. H. Long, at page 789, where he explains that when the mortgage became due Kettenbach notified him of his ownership of the mortgage and note, and requested that he come in and settle. Long talked with some of his friends about it, who advised him that he had better get rid of the mortgage, for Kettenbach might undertake to enforce the payment of it by resorting to other property owned

by Long. He names one person with whom he talked. He thereupon wrote to Kettenbach, saying that he had seen the land [291—48] and that he had concluded that if Kettenbach would repay him for the money he had actually spent he would give him a deed for the land. The proposition was finally accepted, and Kettenbach paid him about \$30.00 and took his deed and cancelled the note and mortgage.

CLAIM OF ELLSWORTH M. HARRINGTON.

In many of its features the record in this claim is very similar to that relative to the Long claims just disposed of. The entry was originally made about the same time that those claims were entered, and final receipt issued June 15, 1903, three days before final proof in the Long claims. As in the case of the Long claims, the entryman, soon after making final proof, executed a note, secured by mortgage, in favor of Robnett, for \$729.75. The amount of the mortgage probably represents the \$400.00 required for the payment of the purchase price of the land, a location fee of \$100.00 or \$125.00, a bonus of substantially \$200.00, and some other incidental expenses. The entryman conveyed to the defendant W. F. Kettenbach by deed on May 8, 1906, the consideration recited therein being \$1,000.00. The entryman is Robnett's brother in law, and the entry was made with the assistance of Robnett, who testifies that the understanding was that he should have the disposal of the claim, and that Harrington was to deed to any person designated by him, Harrington to realize at least \$300.00 over and above his expenses. According to Kettenbach's testimony, he

took the mortgage and finally purchased the claim practically under the same circumstances as are shown to have surrounded the mortgages upon, and the purchase of, the Long claims. Harrington himself testifies, and his statement is not disputed, that he realized clear out of the claim \$299.40, and so far as appears Robnett got nothing except the location fee and possibly the bonus or a part of the bonus [292—49] included in the mortgage note. It is quite clear that Kettenbach had no understanding before or at the time he took the mortgage that he was ultimately to procure title to the land, for efforts were made by Robnett and Harrington to sell to other parties, and, being unsuccessful, the entryman sold to Kettenbach.

The only evidence relative to the regularity of the entry is found in the testimony of Robnett, already referred to, and that of the entryman. The entryman's version of the arrangement between himself and Robnett is materially different from that of Robnett, and, if true, there was no unlawful or improper agreement or understanding. The entryman appears to have testified with considerable candor. In reply to questions put to him by counsel for the Government, he testified that prior to making the entry there was nothing said as to what he would make out of the transaction or about the sale of the land. He said:

“Q. Was anything said about what the land was worth? A. There may have been; I don't remember; I think there was though. I think it was in the neighborhood of \$1,000.00; I ain't positive though.

“Q. Now, what was said? Was it said that you could get \$1,000.00 out of it? A. Well, no. He (Robnett) may have said it was worth in that neighborhood, of \$1,000.00; there was nothing said positive that it was.”

* * * * *

“Q. Now, what was there in it for him? A. Well, he was to get a commission out of it for selling the claim, I think.

“Q. And he was to sell the claim? A. No, he wasn't to sell it. If he did sell it he was to get a commission for selling it. There wasn't no agreement that he was to sell it.

“Q. You mean you didn't have any written agreement? A. No, nor no verbal agreement in that way, not positive. He was dealing in timber claims, and if he had a chance to sell it he had my permission to sell it.

“Q. That was the original understanding, was it not? A. I don't think there was any exact understanding made about it. It was a kind of a—I don't know whether you would call it a mutual agreement or not; we were brother-in-laws, and naturally, as he was in the timber business, he would handle my claim for me.

“Q. And you expected that, didn't you? A. Yes, sir.

“Q. And you understood the first time you talked with him about it that he was to handle it for you? A. There wasn't anything said positive that he was or wasn't. I don't think it was mentioned at all.”

I conclude that the record does not sustain the contention either that the entry was invalid or that Kettenbach, at the time he made the purchase, had notice of any alleged invalidity.

ENTRY OF JOEL H. BENTON.

Final receipt in this entry issued on November 21, 1902, and on December 29, 1902, the entryman conveyed to Robnett, for the specified consideration of \$1,600.00. The deed was recorded April 27, 1903. On July 8, 1907, Robnett conveyed to Elizabeth White, and on September 14, 1907, Elizabeth White conveyed to the Clearwater Timber Company, the present holder of the title. The evidence pertaining to the entry and the several transfers is voluminous. The entryman was called as a witness upon behalf of the Government, and his examination furnishes a striking example of how completely the rule of evidence laid down in *Putnam vs. United States*, 162 U. S. 687, hereinbefore adverted to, was ignored. And as a consequence of the methods resorted to for compelling or inducing the witness to testify in a certain way, it is extremely difficult justly to weigh his evidence as a whole. On some important matters it is quite impossible to determine whether the witness testified as he did because he felt under compulsion to be consistent, or because he desired only to speak the truth. Upon the whole, I would be inclined to hold the entry for cancellation were it not for the rights of the Clearwater Timber Company as an innocent purchaser. While the point is not entirely free from doubt, it is thought that this company did not have such knowledge of the circum-

stances under which the entry was made, or such notice of the claims of the Government, as to put it upon inquiry. It is true the purchase was made after much publicity was given to the criminal prosecutions against Robnett, Dwyer, Kester and W. F. Kettenbach, and [294—51] it is also true that one of the agents of that company testified at one of the criminal trials, but it does not appear that he or any other officer of the company was aware that this particular claim was involved in the criminal prosecutions, or that it was called into question by the Government. The witness Robnett testifies that the transfer was made by him to Elizabeth White upon the suggestion of the defendant William F. Kettenbach that the Timber Company would not buy the claim from him, but would buy the same from Elizabeth White. This is denied by Kettenbach, but if we assume it to be true, such a statement on the part of Kettenbach is not competent as proof against the Timber Company, and there is no evidence that any resident agent in Idaho of the Timber Company had any knowledge at the time the agreement to purchase was made that the title came through Robnett, or that he had ever had anything to do with it. The mode of procedure of the Timber Company in purchasing timber lands was such that the resident agent who conditionally contracted for the purchase of timber claims would not necessarily have knowledge of the chain of title. The examination of the title was delegated to an officer or agent of the company who, so far as the record shows, may have had little, if any, knowledge of the charges which were being pre-

ferred against Robnett and others by the Government. In view of all the circumstances, it is thought that the relief prayed for relative to this claim must be denied.

CLAIM OF JOHN H. LITTLE.

As has already been indicated in the discussion of the Long claims, this entry is in some of its features similar to those. It was made March 20, 1903, and final proof was offered June 15, 1903. Immediately after final proof a mortgage was executed to Robnett for \$760.00, and, like the Long and [295—52] Harrington mortgages, was endorsed to Kettenbach and by him recorded. Kettenbach purchased and took title by deed dated October 24, 1904. The testimony of Kettenbach relative both to the matter of the mortgage and to his purchase of the claim is like that touching the Long and Harrington claims. Robnett had to do with the entry of this claim also, and his account of what occurred is in many particulars similar to his account of the Harrington and Long claims. Upon some features, however, he is not as clear or explicit. He does not testify that he was to have control of the land after title was procured, or that Little was under obligation to convey to a purchaser whom he might designate, nor is his testimony as to what Little was to get out of the claim consistent. In reply to a question put to him by counsel for the Government, he said: "I seen Mr. Little and told him that we had a number of claims up there that I was locating people on, and wanted to know if he didn't want to take up a claim, and he said that he did, but he hadn't the money to go ahead, and I told

him I would arrange for that and also to pay the expenses, and that I had deals on for the disposing of the timber, and that I could get him from \$150.00 to \$200.00 out of the claim." A moment later, when he was again asked by counsel for the Government to state the arrangement, he testified that he said to Little: "I would get him either \$200.00 or \$250.00 for his right, that would be what he would make out of it if the deal went through. If it didn't I thought there was other deals whereby I thought I could handle it and get him that amount of money." As already noted, Robnett does not testify that he was to control the sale of the land, and if he was to have the control and disposition of it, it would be strange if the amount which the entryman was entitled to realize was left in such an indefinite status. From Robnett's testimony it appears that when the arrangement was made [296—53] for this entry the money for the purpose was to be procured from Curtis Thatcher, who advanced a small amount for the payment of preliminary expenses, but then, for some reason, did not carry out his agreement. Upon initiating the entry, and before final proof, Little gave a note for the location fee, amounting to either \$125.00 or \$150.00, according to Robnett's testimony. This was afterwards taken care of by the money procured from Kettenbach. According to Robnett's testimony, which is in harmony with that of Kettenbach and Little, Kettenbach originally had no interest in the entry, and had no expectation of getting the title. He (Robnett) testified:

"Q. Now, what became of that claim, do you know?

A. It was finally deeded to Mr. Kettenbach.

“Q. Do you remember the transaction in connection with that, the conversation relative to it? A. Why, the deals failed to go through that I had at the time of the location, and of course the mortgage came due, and Mr. Kettenbach told Mr. Little that he would have to either pay the mortgage or deed the claim, and he deeded the claim.”

Robnett testifies in general language that Kettenbach and Kester knew of the arrangement he had with Little, but he does not say what he told them or in his conversation with them what arrangement he claimed to have had with Little. The entryman appears to have testified frankly, and as to his arrangement with Robnett he said:

“Q. Now, what were you to do with this claim after you took it up, what was your arrangement? A. Well, the understanding was that Robnett was to find me a buyer for the claim. He guaranteed to sell me the claim—to sell the claim for me.

“Q. Did he tell you when he would sell it? A. Why, he said the chances were favorable for an early sale—a verbal agreement was all.

“Q. Did he tell you whether or not he had anybody in mind or was assembling claims? A. No, not at that time he didn't, not until after we had proved up, before he made any statement in regard to assembling claims.

“Q. Now, did he tell you how much you were to get out of your claim? This is the first talk you had with him before you filed? A. Well, when we came back he told me what a valuable claim I had got. I

don't remember the amount, but he discussed it, and I felt very jubilant over the fact that I had got a good claim. I had taken his word for it all."

If the entryman had an agreement with Robnett by which [297—54] he was to get only a small specified amount out of the claim, his state of mind upon being informed that he had a good claim is not easily explained. He would have no very great interest in the nature of the claim if he was guaranteed so much and was to get only so much out of it. The entryman further testifies that Robnett disappointed him in not getting a purchaser for the claim, and that Kettenbach was urging the payment of the mortgage and was threatening to foreclose. He went to Kettenbach and tried to induce him to purchase the claim. Kettenbach told him he was not buying timber, and advised him to try to sell to someone else, but finally took the claim and paid him a trivial amount in excess of what was due upon the mortgage.

I conclude that the evidence does not support the charge that there was any fraud in the original entry, or that Kettenbach at the time he purchased had knowledge of any alleged fraudulent agreement between the entryman and Robnett.

ENTRIES OF BERTSELL H. FERRIS AND GEORGE RAY ROBINSON.

These two entrymen were closely associated, and made their entries at the same time and practically in the same way, and therefore the two claims may be discussed together. The entries were made March 31, 1903, and passed to final proof June 26, 1903. Upon the day of final proof each entryman executed

a note and mortgage to Robnett for \$728.75, and the mortgages were turned over to W. F. Kettenbach and recorded by him, as in the case of other entries referred to with which Robnett had to do. Ferris conveyed to W. F. Kettenbach by deed dated January 16, 1907, and Robinson conveyed to Kettenbach by deed dated October 16, 1905. In these cases, as in some others in which Robnett was instrumental in locating the entrymen, he had arranged to procure loans for the entrymen from Curtis Thatcher, who apparently made advances for preliminary expenses, and then failed to furnish the money necessary for [298—55] making final proof. Robnett and Ferris first discussed the entry of a timber claim, and, through Ferris, arrangements were also made for an entry by Robinson. The understanding was that the entrymen were to pay their personal expenses, and Robnett was to procure the money with which to make final proof. It is abundantly shown, I think, that there was no intention on the part of the entrymen until long after final proof to convey to Kettenbach, and that there was no expectation on the part of Kettenbach when he let Robnett or the entrymen have the money that he would secure title to the lands. The entrymen, as appears from the dates of the deeds, held the lands a considerable length of time, and transferred them to Kettenbach because they were unable to do any better with them. Ferris realized nothing out of the transaction, and apparently lost some small personal expenses. Robinson netted approximately \$70.00. It is also plain that Robnett felt under no obligation to purchase the land and

exercised no real control over the sale thereof. The understanding, as I gather it from all of the evidence and the circumstances disclosed by the record, including the statements of the several parties, is that Robnett, in encouraging these men to make entries, led them to believe that he would be able to negotiate a sale of the lands after title was secured, so that they would realize a substantial profit, and in that belief they entered the lands and assumed the mortgage obligations referred to. Robnett doubtless expected to receive a commission for his services if he was successful in selling the lands, and the entrymen doubtless expected that he would be compensated, but it was not understood that he had any interest in the lands or could control the sale. In case an offer to purchase had been made to one of the entrymen it is to be inferred he would have given Robnett an opportunity to take the land at the offered price [299—56] before making a sale to a third party, but he would not have recognized any right on the part of Robnett to interfere with or prevent an independent sale, or to claim any compensation in case such sale was made. By counsel for the Government the question was asked of one of these entrymen why he supposed Robnett would go to the trouble of locating him and procuring a loan for him if he was not to have any interest in the entry, and the entryman could give no satisfactory answer, but it must be borne in mind that a charge was being made of from \$125.00 to \$150.00 as a location fee for each one of these entries, and Robnett reaped the benefit of a part of that. In each one of these cases also it

appears that the mortgage that was given covered a bonus of about \$200.00, part of which at least it is not improbable accrued to the benefit of Robnett, and, as already indicated, doubtless Robnett anticipated that if he was instrumental in enabling a number of persons to secure title to claims he could afterwards assemble the lands thus entered, and, as agent, sell them for the owners, thus enabling him to receive a considerable sum as commission for making the sale. He could, with considerable confidence, rely upon his ability to get options from the various entrymen after they had procured title, at prices not greatly in excess of the amount which it had cost the entrymen to get the title; in other words, the entrymen would be content to make a comparatively small profit. Such options were procured in these cases, and in some others. It turned out, however, that Robnett was over sanguine as to the value and salability of the lands. As it was put by one or two of the witnesses, "the bottom dropped out of the sale of timber lands in that country." The witnesses sometimes speak of consulting Robnett before selling or contracting to sell. The reason for such consultation is not always fully disclosed, [300—57] but in the case of Robinson, for instance, it appears that one Emory came to him for an option, and he stated that he would first have to consult Mr. Robnett, but it further appears that he had to consult Robnett because he had theretofore, and after final proof, given to him at least one, and possibly two or three, different options.

Upon the whole, I conclude that there was nothing

unlawful in the relations between either of these entrymen and Robnett or any other of the defendants, and that the entries were valid.

CLAIM OF EDGAR H. DAMMARELL.

The entry was made April 25, 1904, and passed to final proof July 12, 1904. The entryman executed a deed to Jackson O'Keefe on July 26, 1904, and on July 30, 1904, O'Keefe, by quitclaim deed, conveyed to Kester and Kettenbach. The former deed was recorded January 18, 1906, and the latter January 31, 1906. Later, on December 31, 1909, Kester and Kettenbach deeded to the Idaho Trust Company. The claim is one of a group of six different claims entered at the same time and in the record referred to as the O'Keefe group, owing to the fact that Jackson O'Keefe, one of the entrymen, participated in the proceedings by which the title was procured from the United States and transferred to Kettenbach and Kester. The names of the other entrymen are Edgar J. Taylor, Charles W. Taylor, brothers, Joseph H. Prentice, Dammarell's cousin, Jackson O'Keefe, and David S. Bingham. O'Keefe was at the time associated with Kester in an irrigation project at Cloverland, Washington. The two Taylors were his nephews, and other of the entrymen were employed by, or friendly to him. They all, except Bingham, went up to the timber together, and, under the guidance of the defendant Dwyer, who acted as locator, [301—58] selected their claims. With unimportant exceptions, the necessary funds to pay their expenses and to pay the purchase price of the land were arranged for by O'Keefe, and procured

at the Lewiston National Bank, of which Kettenbach was at the time president and Kester the cashier. In some of their features the claims are very similar, but they all differ in their details. Referring particularly to the claim now under consideration, the entryman, who was called as a witness by the Government, in testifying as to his arrangement with O'Keefe, said, on direct examination:

“Q. Well, wasn't anything said at that time about the disposition of the land? A. No, nothing said that I remember of. Of course I knew that you couldn't dispose of the land until you had a receiver's receipt.

“Q. Yes, I am not asking about disposing of it, but I mean a tacit understanding or agreement as to what you should do after you got your final receipt? A. No, sir.

“Q. There was nothing said whatever?

“A. Nothing said whatever.”

And upon being interrogated as to the relations which existed between him and O'Keefe, and as to why O'Keefe should take any interest in him and assist him in getting the necessary funds with which to take up and pay for a timber claim, the entryman testified that he had bought some land from O'Keefe, a part of the purchase price of which he still owed, and then replying to questions put to him directly by counsel for the Government, he testified:

“Q. Mr. Dammarell, I will ask you whether or not, when Mr. Taylor spoke to you, it wasn't your understanding that in accepting the money that Mr. O'Keefe had to advance you you were to take up this

claim and convey it to him or to whomsoever he would suggest? A. No, sir.

“Q. I will ask you if you had any reason to believe that Mr. O’Keefe had to advance you all of this money when there was nothing in it for him?

“A. I believe that Mr. O’Keefe would have advanced that much money to me; we were friends.

“Q. That he was just interested enough in you to put up this money for you? A. Yes, sir, I think so.

Upon cross-examination he testified:

“Q. Now, Jackson O’Keefe was a good man, was he not? A. Jackson O’Keefe was a good man.

“Q. Was always willing to help his friends and neighbors? A. Too much so. [302—59]

“Q. And you believe that he would have furnished you that money or he would have furnished his nephews that money willingly, if they had had an opportunity to use it in that way?

“A. Yes, sir, I believe he would.

“Q. And you don’t believe he would have asked any compensation for it, do you?

“A. As a friend and as a man of poor business management, I don’t think he would.”

Upon being asked to explain why he deeded to O’Keefe so soon after making final proof, he testified, on direct examination, that he had a family, that he had left a good position in the east, and had come west and located on 160 acres of dry land, that he had found it more difficult to maintain his family while improving the land than he had expected, that in entering the timber land he had hoped to make some money out of it, that he had a friend in the east

who had told him that any time he (the witness) needed money to let him know and he would make him a loan, and that he had at first expected to get the money from this friend with which to take care of his entry, but that he had made an investment for him at Cloverland which was not turning out well, and for that reason he didn't like to ask him for a loan; furthermore, that he (the entryman) had incurred some bills which were worrying him, and that finally, after thinking the matter over, and after hearing a good deal about forest fires, he concluded that it would be best for him to sell the claim. He talked the matter over with O'Keefe, but O'Keefe encouraged him to hold on to this land, suggesting that it would be a good proposition, and that it would be satisfactory to him (O'Keefe) if he (Dammarell) could get the money somewhere else, and upon cross-examination, further referring to the matter of sale, and as indirectly bearing upon the question as to why the deed which he gave was not placed on record, he said:

“Q. And did he not tell you when you wanted to sell it to him and when he did decide to buy it that he would give you \$700.00 for it, or \$150.00 over and above the fee?

“A. I believe that was the true words, which netted me about \$100.00 or \$150.00. [303—60]

“Q. Did he not also tell you that if you had an opportunity to sell it for more money or could redeem the land within a year by paying him the money back that he had paid you that you could do so?

“A. Yes, sir, he did.

“Q. That was your understanding?

“A. That was my understanding.

“Q. When you sold it to him? A. Yes, sir.”

There are some circumstances disclosed by the record tending to support the theory of the Government, that the entry was made in pursuance of an understanding between the entryman and O’Keefe, and, through O’Keefe, with Kester and Dwyer, that the land should, upon passing to final proof, be deeded to Kettenbach and Kester for a fixed amount. Unquestionably O’Keefe got the money at the Lewiston National Bank for the entrymen, and it is wholly probable that the defendants Kettenbach, Kester and Dwyer knew that it was being furnished for the purpose of paying the expenses of, and making final proof upon, the entry. The explanation by the defendants of the arrangement by which the money was furnished to O’Keefe is wanting in detail, and is far from satisfactory, but most of these suspicious circumstances, together with the testimony of Robnett, relate more to the conduct of O’Keefe and the defendants, and their relations with each other, and what they did and said, than to the conduct of the entrymen or their relations with O’Keefe or anyone of the defendants. Were a case of fraud in the entry shown it might very well be concluded that the defendants, if they did not participate therein, at least had knowledge thereof, or were put upon inquiry relative thereto, by reason of their dealings with O’Keefe. Notwithstanding these suspicious circumstances, I have been unable to avoid the conclusion that the entryman was frank in his testimony,

and endeavored to tell the truth and state the facts as he understood them and remembered them, and that, so far as he was concerned at least, he did not, when he entered the land and made final proof, have the understanding [304—61] that he was under any obligation to transfer the land to O'Keefe or any of the defendants, or to any other person, or to sell it for any specified consideration. In other words, he made the entry with the impression that his only obligation was to reimburse O'Keefe for the moneys advanced to or for him in paying the expenses incident to securing title. That being the case, it is not apparent how the patent could properly be set aside even if it were found that the defendants advanced the money to O'Keefe, or advanced it to the entryman through O'Keefe, with the hope, or even the expectation, that they would be successful in securing the claims. In considering whether or not the entry was fraudulent, the vital question relates to the attitude and understanding of the entryman himself, and if he is free from culpability the validity of the claim is not affected by the hope or expectation of third parties. O'Keefe was doing business with the Lewiston National Bank. He was associated in a business enterprise with Kester personally. Kester and Kettenbach were associated together, and Dwyer was employed by them in connection with their timber transactions. If the close relations existing between O'Keefe and Kester and Dwyer and Kettenbach are borne in mind, it is possible to explain, consistently with the theory of innocence, the circumstances surrounding the furnish-

ing and disbursement of the moneys in connection with the entry and proof upon these claims, and the payment of the location fee, but even if the other view be taken, and it be concluded that a common design on the part of Kester, O'Keefe and Dwyer is thus shown unlawfully to acquire title to timber lands, their purpose or expectation could not affect the validity of the entry so long as the entryman himself did not lend himself to such purpose or design, but did only what was permissible under the law. [305—62]

My conclusion upon the whole matter is that the entryman acted innocently and made no agreement and had no understanding to sell the land to anyone for any specified sum, and that O'Keefe was actuated both by a feeling of friendliness to the entryman and by the hope, if not the expectation, that sooner or later Kester and Kettenbach would be able to acquire title to the claim, and that he would receive a commission or compensation in some other form, and that Kester, by reason of his business relations with O'Keefe and his hope of securing title to the claims sooner or later, permitted O'Keefe to draw from the funds of the bank in excess of the credit which would ordinarily be extended, and that Dwyer, by reason of his relations to Kester and Kettenbach, knew that his location fees would be ultimately settled for in connection with the adjustment of the loans to or for O'Keefe when the latter made final settlement with the bank, and that therefore the payment by the entryman was a mere formality.

ENTRY OF JOSEPH H. PRENTICE.

Much that has been said concerning the Dammarell entry is applicable to this claim. The entry was made April 25, 1904, passed to final proof July 11, 1904, was deeded to O'Keefe July 25, 1904, and by O'Keefe a quitclaim deed was executed to Kester and Kettenbach July 30, 1904. The deeds were recorded together with the Dammerell deeds. Speaking of his understanding with O'Keefe, the entryman testified that the matter of taking up a timber claim was first discussed with him by one of the Taylor boys, and following the conversation, he (Prentice) went to see O'Keefe. O'Keefe confirmed the statements made by Taylor, saying: "Yes, that is right; I will loan you the money and take your note for everything, your straight note for a year for the filing money, [306—63] and the proving up money, and the current expenses going up to see the timber, and also to pay the locator. I said, 'Do you think I can ever sell it?' and he said, 'Yes, you can sell it. In case you get tired of the deal, I will give you \$150.00 over and above all expenses.' " That was some time before any of the parties went up to see the land. He further testified that there was some conversation to the effect that if, when the year was up, he (Prentice) could not take up the note, he could be sure to get \$150.00 at any rate. The claim made by him that there was no understanding that he was to take \$150.00, or was to get only \$150.00 out of the transaction is confirmed by an incident which he seems to have remembered very clearly, and which it is hardly to be supposed is a mere fab-

rication. It seems that the land he entered, together with other lands, first became subject to entry on April 25, 1904, and there were at the local land office a great many applicants, as a consequence of which a line was formed, in which there were a large number who expected to file upon claims. Prentice had a position near the head of the line, and, while waiting for the hour to arrive for making filings, someone lower down in the line offered him \$500.00 for his place. The offer was declined, but Prentice stated when on the stand that he had often been sorry since that he had not accepted it. Upon being asked by counsel for the Government why he had not accepted it, he answered:

“A. Well, I thought I could make more out of it.

“Q. Wasn't it your understanding that you were to get \$150.00?

“A. I knew I could get that, but I never promised that I would sell it for that.

“Q. Didn't you feel under any obligation to Mr. O'Keefe?

“A. No, sir, I did not, because I had given my note.

“Q. But you hadn't given any note then.

“A. No, but I knew I had to. I was negotiating the money from my brother in law in the east. My intention was to keep that claim for a while at least.”

Notwithstanding this alleged intention upon his part, it appears that he sold his claim very soon after making final proof, and in explanation of that fact he testified:

“A. I [307—64] will tell you how that come along. I owed some money on my house, and the lumber company was crowding me for it, and they wanted me to go up there into the mountains, the Blue Mountains, and file on a homestead and stay there until I had lived there long enough to commute and then sell the land to the Blue Mountain Company, you see, and they had offered me work there in the mill, and I didn’t want to take my wife and children up there, and I thought possibly I could get the money from the east, and possibly hold this claim down for a while and sell it, and my brother was thinking of investing some money in the east, and I wrote to him and asked him if he could help me out, and I asked Jack, and I said, ‘Jack, now you told me I could get \$150.00 any time I wanted it, and I would like to get that much money, but I don’t want to sell it,’ and Jack says, ‘All right, I think we can fix it up,’ and he told me I could sign a bond for a deed, that is what I thought I did sign until Mr. O’Fallon and Mr. Goodwin convinced me I had signed a warranty deed.”

Apparently the witness did sign the instrument which is in evidence as a deed, under the impression that it was a bond for a deed, and apparently he had some words with O’Keefe about the matter later. Some light may be thrown upon this incident and misunderstanding, and also upon the fact that the deeds in this case, as in the Dammarell case, were not sooner placed on record, by reference to certain facts elicited by the cross-examination, his testimony being as follows:

“Q. Mr. Prentice, Mr. O’Keefe told you that you would have a year or until the maturity of that note to redeem that land and sell it to anyone else, didn’t he? A. Yes, he told me I would have until the note ran out.

“Q. And when the note ran out you found you didn’t want to redeem it, and let it go?

“A. I didn’t wait for the note to run out.

“Q. He told you he wouldn’t record the deed until after that time?

“A. Yes, sir, he told me that deed wouldn’t be recorded, or the bond for a deed.

“Q. He told you he wouldn’t record that until he found out whether or not you wanted to take up the claim? A. Yes, sir.” [308—65]

And thereupon the witness again stated that he never did decide to sell the land, that he thought he was only giving a bond for a deed. It is not apparent that the witness was unduly friendly to the defendants or desired to withhold the facts, and, taking his testimony to be true, the entry was free from legal objections.

ENTRY OF EDGAR J. TAYLOR.

In its material feature this entry is very similar to those of Dammarell and Prentice. It was made April 25, 1904, passed to final proof July 11, 1904, and was deeded directly to Kester and Kettenbach July 12, 1904. Like Dammarell, Taylor seems to have had the impression that the instrument which turned out to be a deed was only a contract or bond of a deed. This misunderstanding may have been

due to the fact that he was told that if he wanted the land back or could get any more for it prior to the maturity of his note, which ran for a year, that he could have the land back upon paying the amount due upon the note. Upon this point his testimony strongly corroborates that of Dammarell and Prentice. From his testimony, found at page 668, it appears that he always had the impression that notwithstanding the instrument which he executed on July 12th, he still had the right to take the land back or sell it to some other person, and in speaking of the transaction of closing up the loan and giving the note, which was signed by himself and brother, for \$1,100.00, after making final proof, he testified, in response to questions put to him by counsel for the Government: "He (referring to O'Keefe) wanted us to give a bond for a deed to secure the note, and we turned the receiver's receipts over to him and gave a bond for a deed at the time." And as to his understanding with O'Keefe prior to making the entry he testified, upon his direct examination, as follows: [309—66]

"Q. When you made your filing, to whom did you understand you were to convey this land?

"A. When I made the filing?

"Q. Yes.

"A. You mean who I understood I would sell the land to?

"Q. Yes.

"A. I didn't understand then that I would sell it to anybody; I understood I could sell it to Mr. O'Keefe for \$150.

“Q. Did you understand that Mr. O’Keefe had some connection with Mr. Kettenbach or Kester?”

“A. No, I did not.”

In other words, apparently the only assurance given to him, so far as he understood it, was that Mr. O’Keefe, his uncle would, if he desired to sell, give him at least \$150.00 for the land, and I am inclined to think that that was the real understanding and the real arrangement, and that after making final proof he and his brother executed a joint note for \$1,100.00, and he was given to understand that the instrument which he signed was given only for the purpose of securing payment of the note, and that if he had an opportunity to sell at any time before the maturity of the note he would have a right to do so, subject to the payment of the note. It appears to be true that the note was not returned to him upon execution of the deed, but was held by the bank or O’Keefe or Kester and Kettenbach. It is wholly improbable that if it was understood that the execution of the deed closed the transaction he would have permitted his note to go along and to be held together with the deed. It is not clear just what the motives of the other parties to the transaction were in putting the matter into that form. It is well known that the popular idea prevails in some quarters that the taking of a deed upon the conditions on which this deed was taken, according to the testimony of the entryman, instead of a mortgage, avoids the necessity of foreclosing in case the obligation of the debtor is not discharged, and it may be that the parties acted upon that theory. But

whatever may have been the motives of the other parties, the controlling question here is as to what was the understanding of the entryman, and his good faith in making the entry is not affected by the motives and purposes [310—67] of the other parties to the transaction. The entry is accordingly held to be valid.

ENTRY OF CHARLES W. TAYLOR.

This entry was made April 25, 1904, passed to final proof July 11, 1904, and conveyance by deed to Kester and Kettenbach was made July 12, 1904. I am inclined to the view that in all material respects the entry was made and the land was conveyed upon the same conditions and under the same circumstances as have been described in the case of the Edgar J. Taylor entry. The testimony of this entryman, however, is very unsatisfactory from any standpoint. Inconsistent statements are made in rapid succession, without any apparent appreciation upon the part of the witness of their inconsistency. It is not thought that he was trying to withhold or color the facts, or that he was hostile either to the Government or the defendants. The witness is apparently not a man of strong mentality, and lacks the capacity to see a transaction as a whole, as a consequence of which in testifying he states a fact without regard to its relation to other facts, and without any limitation by reason of such relation. A witness with such a mental attitude is easily led into making fragmentary statements, which, being unqualified and taken literally, leave an erroneous impression of the transaction as a

whole, and in the examination of the witness counsel for both sides indulged in questions which were highly leading. He testifies that when his uncle (O'Keefe) first spoke to him about taking up a claim, which was several months before the entry was made, the proposition was that he (O'Keefe) was to purchase the claim and pay therefor the specified sum of \$150.00 and furnish all the funds necessary to secure title. Later, and some time before the entry was made, O'Keefe told him that he had learned that such an agreement could not lawfully be made. And then [311—68] from time to time upon the several direct examinations and the several cross-examinations of the witness, in response to leading questions he seems to say at one time that he proceeded and made the entry and procured title under this original understanding, by which he was to sell the claim for \$150.00, and at another time he states that he did not proceed under the original understanding. But his final word, while upon the witness-stand, was to the effect that he had no understanding or agreement by which he was to sell to O'Keefe or to any other person. Near the close of his last "recross"-examination, he testified:

"Q. But you just testify that afterwards Mr. O'Keefe called that deal off, that he couldn't carry out that agreement, and that you had no other contract or agreement regarding it?

"A. There was nothing more ever said about it.

"Q. That was long before you filed on your claim, wasn't it?

"A. It was the time we were going into the tim-

ber or coming out of the timber.

“Q. Well, you went to the timber and came out before you filed? A. Yes, sir.

“Q. Well, then, at the time you filed on it, it wasn't your understanding that it was to go to Kester or anyone else?

“A. Well, there was nothing more said about it. I looked at it then just the same as I do now, that if I had the claim now and had a deed to it, and if anybody offered me \$1,000.00 or anything more then I would sell it and pay them the money I borrowed from them.

* * * * * *

“Q. Regardless of this affidavit—I don't care whether this affidavit is true or false—but regardless of this affidavit, when you filed on the claim you didn't understand that it was to go to Kester, did you?

“A. After he told us that we never give it another thought. We considered that we wasn't under no obligations.”

And upon the last “redirect” examination, by which his testimony is closed, he said:

“Q. When you went to the land office and filed what did you really understand was going to be done with your claim? What did you intend to do with it after you made proof?

“A. I aimed to sell it, of course.

“Q. Whom did you think you were going to sell it to?

“A. I knowed I could sell it to O'Keefe if I didn't sell it to nobody else, but I never give it any more

thought. As I already told you, after he told us that, I never talked to him any more about it.

“Q. But even when you filed you knew he wanted it and would take it, didn’t you?

“A. I knew I could get rid of it to him, that was all there was to it.” [312—69]

As to the circumstances of making the deed soon after making final proof, the witness testified as follows, upon cross-examination:

“Q. Then after you got your receiver’s receipt don’t you remember, after reading this affidavit, that you and your brother talked about selling your claims then? A. Yes, we spoke about it.

“Q. After you made your proof? A. Yes, sir.

“Q. And you and your brother borrowed \$1,100.00, did you not, and gave your note for it?

“A. Yes, sir, gave our note for \$1,100.00.

“Q. That was in payment for the money you had from Mr. O’Keefe for expenses and location fee and the purchase price of the land? A. Yes, sir.

“Q. How long was that note to run?

“A. A year, I think; I am not positive.

“Q. And you and your brother talked over the advisability of selling your claim, going home after you made your final proof you talked it over, didn’t you? A. Yes, sir.

“Q. And you went and talked to Mr. O’Keefe about it after you got home, the next day some time, didn’t you?

“A. Either the next day or the day after; it was within a day or two though.

“Q. And you told him if you could get \$150.00 for

the claim, over and above the note, and get your note back, you would be willing to sell, or words to that effect? A. Yes, something like that.

“Q. Didn’t he tell you he would give you the \$150.00, but if you had an opportunity to sell it within a year for more money you could do so, you could redeem it within a year, or something to that effect? A. I don’t remember just what he did say.

“Q. Don’t you remember something of that kind occurring?

“A. Something was said. He didn’t say much to me about that; he was talking to my brother about it.”

On the whole, while, for the reasons stated, the evidence is unsatisfactory, it is thought that it is insufficient to justify cancellation of the entry.

ENTRY OF DAVID S. BINGHAM.

This entry was made April 25, 1904, passed to final proof July 15, 1904, was transferred to O’Keefe July 26, 1904, and O’Keefe, by quitclaim deed transferred to Kester and Kettenbach July 30, 1904, and by Kester and Kettenbach the land, together with other timber tracts, was deeded to the Idaho Trust Company July 6, 1907. In some of its features this entry is different from the other so-called O’Keefe entries. [313—70] For practically the same reasons and in the same respects the testimony given by the entryman, who was called as a witness for the Government, is quite as unsatisfactory as that of C. W. Taylor. It is not apparent that the witness was biased in favor of, or prejudiced against, any of the parties to the suit, and I have no doubt that he in-

tended to disclose the facts as he remembered them and understood them to be; but it remains true that different portions of his testimony, elicited by leading questions, and especially questions calling for conclusions, are inconsistent one with the other. It seems that Bingham was acting as foreman for Kester and O'Keefe in their irrigation project, but no suggestion was made to him, as it was to the Taylors, that he take up a timber claim. Apparently he first learned that the Taylor brothers and Dammarell and Prentice were going to take up claims after they had made their visit to the timber, in company with O'Keefe. Feeling somewhat aggrieved, he made inquiry as to why he had not been given the opportunity, as well as the others, and he was thereupon informed that probably Dwyer would still be able to find a claim for him. Bingham was already familiar with the country in which the timber claims were being taken, and it was concluded that it was not necessary for him to make a special trip for the purpose of viewing the land, and Dwyer simply gave him the description of the claim which he had picked out. The money was furnished to him practically in the same way as to the other entrymen, and he made his entry at the same time, and Dwyer exacted the customary location fee. Somebody, probably O'Keefe, also arranged to hold a place for him in the line which was formed at the land office immediately before the lands became subject to entry. From his original testimony given upon direct examination it would appear pretty clearly that he had an unlawful agreement with O'Keefe to sell the

claim as soon as he acquired title. But later, in [314—71] describing the circumstances connected with the sale and transfer to O'Keefe on July 26th, a couple of weeks after he made final proof, the witness states that prior to the day of making the deed he had a talk with O'Keefe, who wanted to know if he, the entryman, desired to sell. The witness goes on to state that there was ten acres of orchard land that he wanted to buy, and there was some money coming to him, and he thought if he could get the money out of the timber claim he would buy this ten acre tract, and after talking with his wife they concluded that they would better sell the timber land and buy the ten acres. Accordingly, when O'Keefe came to him at his home the day the deed was executed he testifies that O'Keefe said: " 'Well, now,' he says, 'the arrangements is,' he says, 'to let you have over and above all expenses,' he says, 'that you was to down there, why,' he says, '\$150.00.' 'Well,' I says, 'I might as well take it, Jack, along with the balance of them.' He told me he had made similar arrangements as far as the Taylor boys, I guess." Prior to that he had testified that O'Keefe had told him before he perfected his entry, that he (O'Keefe) was connected with Kester and Kettenbach, and "would like to have a prior right to buy my claim if I felt disposed to dispose of it, and that he had others, and mentioned others that he had bargained for." Out of his own money he paid his personal expenses and the filing fees, but expected to be reimbursed when he sold the land. Upon cross-examination he testified as follows:

“Q. Now, you had no talk with Mr. O’Keefe, then, in regard to selling him the land until after you proved up?

“A. He asked me if he could have the prior right of buying this land.

“Q. Did he say the prior right or the preference right?

“A. The preference right or the prior right. I understood if I wanted to sell that he wanted the first chance.

“Q. And that was the talk you had with him?

“A. Yes, sir.

“Q. And that is all the talk you had with him in regard to buying? A. Yes, sir.

“Q. And then after you proved up some little time he came to Cloverland and asked you if you wanted to sell? A. Yes, sir.

“Q. And you told him that you would have to see your wife? A. Yes, sir.

“Q. And you did go to see your wife?

“A. Yes, sir. [315—72]

“Q. And you asked him how much he would give you, or something to that effect, didn’t you?

“A. Yes, sir.

“Q. And he told you that he had given Dammarell and Prentice—that he had bought their claims, and he had? A. And the Taylor boys.

“Q. Yes, and the Taylor boys, he had bought their claims and had given them \$150.00 over and above expenses? A. Yes, sir.

“Q. And that he would give you the same?

“A. Yes, sir.

“Q. Then did you talk with your wife again after you had talked with him about the price?

“A. Yes, sir.

“Q. And she told you that she thought you had better sell? A. Yes, sir.

“Q. If you could buy the other piece of land up there? A. Yes, sir.

“Q. And you went back and told O’Keefe that you would take it? A. Yes, sir.

“Q. And the bargain was all made in regard to the sale of your land there that day, the day that you sold it?

“A. The day that I sold it, yes, we closed the bargain that day.

“Q. Mr. Bailey was with him? A. Yes, sir.

“Q. And he sat down at the table and did some writing, and either drew up this deed, as you testified on your direct examination, or was doing some writing? A. Yes, sir.”

Thereupon the witness was shown the deed, and his attention called to the fact that it was apparently written and signed with the same ink, and after looking at the instrument the witness expressed the opinion that the deed was drawn up while Mr. Bailey was at the witness’ house. The witness further testified that he understood from O’Keefe that he was acting as a middle man for Kettenbach and Kester. And again reverting to the relations between himself and O’Keefe prior to final proof he testified as follows:

“Q. Well, he wasn’t talking about buying your claim before you made final proof, was he?

“A. Why, as I stated before, after I put up my money and took a claim, why, he wanted the prior right providing I wanted to sell.

“Q. He wanted the preference right?

“A. He wanted the preference.

“Q. That was all he said?

“A. That was all he said until after I proved up, and then he was dead anxious to get the claim.”

And upon redirect examination the witness testified as follows:

“Q. As a matter of fact, Mr. Bingham—I am not asking you now whether you had an absolute contract or agreement with Mr. O’Keefe at that time—but as a matter of fact wasn’t it your understanding that you were going to convey that to O’Keefe after you got it? A. That is my recollection. [316—73]

“Q. You would not have taken it up if you hadn’t had that understanding, would you, at that time?

“A. No, I don’t believe I would at that time.

“Q. And the matter turned out just exactly as you understood it would when you first talked to Mr. O’Keefe about it? A. Yes, sir.

“Q. And you did just what he told you in the whole transaction? A. Yes, sir.”

Immediately, upon recross-examination, the witness testified:

“Q. Now, Mr. Bingham, you had no talk with Mr. O’Keefe about selling to him, further than he wanted the preference right to buy it?

“A. Yes, sir, that was all, that was what I stated.

“Q. And you had no talk about the price?

“A. No, sir.

“Q. And you could have sold it to anyone else you wanted to if he would have given you more than Mr. O’Keefe? A. Yes, sir.

“Q. Then you had no understanding with him that you would deed the land to him?

“A. Not only me being working for him, and the like of that, why, he wanted the right for it, that is, the first right, and I told him I would give it to him. I could have sold it to anybody though, as far as that is concerned.

“Q. Now, you just told Mr. Gordon that you understood that you was to deed it over to O’Keefe?

“A. I didn’t tell him anything of the kind, that I was to deed it over to him, or anything of the kind. I told you he had the prior right to it, or the preference.

“Q. Well, you just said, in reply to Mr. Gordon’s question, you told him—

“A. Yes, that was the understanding, that if I sold to him I was to deed it over to him, of course.

“Q. How is that?

“A. If I sold it to him I was to deed it over to him.

“Q. Then there was no understanding?

“A. No understanding whatever, no.

“Q. What do you mean to be understood as saying is that if you wanted to sell it—

“A. I wasn’t tied up with him so that I couldn’t sell it to anybody else. I could have sold it to other parties if I had wanted to.

“Q. And the only obligations you felt under to Mr. O’Keefe was to give him the preference right?

“A. A preference right to buy, yes, sir.

“Q. If he would have given you as much as anybody else you would have sold to him?

“A. Yes, sir.

“Q. And if he would not have given you as much as anybody else you would have sold to anybody else?

“A. Whoever would have given the most for it.”

Clearly such testimony, with its apparent inconsistencies and contradictions, cannot be taken as satisfactorily establishing the affirmative proposition that there existed between the entryman and O’Keefe at the time the entry was initiated any understanding or agreement upon the part of the entryman that he was to sell to O’Keefe or to sell to any person for any fixed price. An understanding by an entryman that if he sold he would give the first [317—74] opportunity to a designated person to purchase, provided such person would give as much as anybody else, does not constitute an agreement obnoxious to the statutes pertaining to the entry of timber lands.

ENTRY OF JACKSON O’KEEFE.

The remaining entry embraced in the “O’Keefe group” is that of Jackson O’Keefe himself. The entry was initiated at the same time that the other entries were made, and likewise the final proof. Upon August 27, 1904, about six weeks after final proof, O’Keefe executed a mortgage to the Lewiston National Bank to secure the payment of \$2180.00, and the same was promptly recorded, and on June 16, 1906, he transferred the land to Kester and Kettenbach by deed, reciting a consideration of \$1500.00.

There is no evidence at all bearing directly upon the circumstances surrounding the entry or touching its validity. It must be held that the evidence is insufficient to sustain the charge that title from the Government was procured by fraud. [318—75]

THE STEFFEY GROUP OF ENTRIES.

The entries involved in case No. 407 are frequently referred to as the Steffey entries, by reason of the fact that one Harvey J. Steffey, a timber cruiser and locator, located the eight different claims, and was instrumental in procuring the money to defray the expenses incident to securing title, and also in making a sale of the lands to the defendants Kettenbach and Kester. The entries were made by CHARLES S. MYERS and JANNIE MYERS, his wife, CHARLES A. LONEY and MARY A. LONEY, his wife, JAMES T. JOLLEY and EFFIE JOLLEY, his wife, CLINTON E. PERKINS, and FRANK J. BONNEY. The four men first named are brothers-in-law, and Mrs. Myers, Mrs. Loney, and Mrs. Jolley are sisters. Each of the claims embraced 160 acres except that of Jannie Myers which covered only 80 acres. The entry of Charles S. Myers was made in the latter part of 1905, and the other seven entries were made upon various dates during the year 1906. While the testimony pertaining to the several claims differs in minor particulars, the arrangement under which they were entered and the circumstances surrounding the entry, the final proof, and the conveyance to Kester and Kettenbach are, in substance and effect, substantially

the same. So far as the regularity or irregularity of the entries is concerned, the evidence consists almost exclusively of the testimony of Steffey and of the several entrymen. If Steffey's version of his arrangement with the several entrymen be accepted as true, the entries were undoubtedly invalid, for in every case an understanding was had between him and the entryman prior to entry, giving him, for a fixed and definite consideration, control of the title after it should be procured from the United States. For reasons to be stated, however, the testimony of this witness is to be scrutinized closely and received with caution, and it is doubted whether, under the circumstances, upon his [319—76] evidence alone, a court could properly cancel the patents. In the main the testimony of the several entrymen is the same, and, though each one of them at one time or another while on the witness-stand, categorically denied the existence of any agreement or understanding with Steffey prior to the initiation of the entry as to the disposition of the title, I am convinced by the circumstances of the case and the admitted conduct of the parties that they all made the entries with the understanding both upon their part and upon the part of Steffey that, upon the issuance of final certificate, for a definite consideration, they should convey the land to anyone whom Steffey might designate. My impression is that the entrymen were reluctant to appear as witnesses for the Government, and were disposed to place what they did in as favorable a light as possible. It is not improbable that some of them at least, by reason of the

fact that the actual understanding with Steffey was not fully expressed, but was in a large measure left to inference, were led into evading, without fully appreciating that they were violating, the law. Each one from time to time in the course of the proceedings procured the necessary funds from Steffey to pay expenses and to pay the Government price for the land. No note was given and no interest agreed upon. Within a short time after final certificate was issued each executed a deed at Steffey's request in favor of Kester and Kettenbach. The circumstances surrounding the execution of the deeds, in most cases at least, are significant. Apparently at no time between the filing of the original application and the execution of the deed was there any discussion between the entryman and Steffey as to what disposition should be made of the land or what the entryman should realize out of it, or what price it should sell for; yet when the deeds, prepared under Steffey's direction, were presented, each signed as a matter of course and without question as to the [320—77] consideration to be paid, as if the whole matter was being done pursuant to some preconcerted arrangement.

There remains for consideration the question whether or not Kester and Kettenbach are purchasers in good faith, without knowledge of the facts rendering the entries invalid. The contention put forth upon behalf of the Government is that Steffey was acting in the interest of Kester and Kettenbach, and pursuant to an understanding had with Dwyer, who was either associated with Kester and Ketten-

bach or represented them as agent. Primarily, this contention rests upon the testimony of Steffey alone. In a slight degree it is corroborated by the testimony of Robnett, and possibly by that of Chapman, the former being at the time bookkeeper and the latter teller in the Lewiston National Bank, of which Kettenbach was president and Kester the cashier. In substance, Steffey testifies that he had worked for Dwyer in the timber, and was himself locating people upon timber lands, and that at some time, he doesn't remember when, but after he had cruised the lands embraced in this group of entries, he called Dwyer's attention to them, and Dwyer suggested that he go ahead and locate people upon them, and they (referring to himself, Kettenbach and Kester) would pay \$200.00 a claim, and furnish Steffey with the necessary funds to enable the entrymen to pay the expenses and procure the title. There is no pretension that he was employed upon a salary or commission basis, nor, according to his testimony, was there any understanding as to what he should get out of the project. He was scarcely acquainted with Kester or Kettenbach, and directly had little, if anything, to do with either one of them relative to any of these claims. He testifies that at one time he discussed the matter of one of the claims with Dwyer and Kester, or in Kester's presence, and at another time he appealed personally to Kettenbach to arrange for the necessary funds to [321—78] make some final proofs. These incidents and conversations are either denied or explained by the defendants. Undoubtedly Steffey did from time to time

procure funds from the bank by drawing his personal checks, either in his own favor or in favor of the entryman, and most of the requisite funds were thus secured to perfect the entries. The fact that the funds were thus obtained through the bank with the knowledge of Kester and Kettenbach is regarded by the Government as a circumstance strongly tending to corroborate Steffey's version of the transaction, and, as will be seen, the issue in a measure depends upon the probative significance to be attached thereto. Plainly, the testimony of Steffey must be treated as that of an accomplice, for we have already concluded that the entries were made pursuant to a conspiracy, entered into by Steffey and the several entrymen, he being the leader, to defraud the Government out of its timber lands. Not only was he an accomplice in the conspiracy, but in effecting the object thereof he suborned perjury, for he knowingly induced the several entrymen to commit perjury in their preliminary applications; and it is further to be noted that while acting as a witness at the final proof in several cases he made answers under oath which he knew to be untrue, and which, while possibly not constituting technical perjury, involved the moral obliquity of perjury. At subsequent dates, as shown by the record, he persuaded some of these entrymen to make affidavits giving versions of the transaction not in harmony with what he knew to be the facts. Just what induced him voluntarily to become a witness upon behalf of the Government and to make known the facts disclosing criminal conduct upon his part is not entirely clear. He seems

to disclaim any feeling of ill-will toward the defendants Kester and Kettenbach, and yet, with some apparent reluctance, admits that he does not think they treated him right. He very evidently bears considerable ill-will [322—79] toward Dwyer. There is some testimony in the record that he had stated upon different occasions that he was going to get even with the defendants. At page 1315, upon cross-examination, he himself testifies:

“Q. Did you tell him (a certain individual) they (Kester and Kettenbach) hadn’t done right by you and you was going to cinch them?

“A. Very likely I did. I never told him I would cinch them, but I very often told him they didn’t do right by me.”

And at page 1318 he testifies:

“Q. Now, when did you first wake up to the realization of the fact that there was something wrong about this transaction?

“A. Before I entered into it.

“Q. When did you make up your mind to tell the Government officials about it?

“A. Well, some time after Dwyer had tried to sell my barn and did other things in connection with it.

“Q. As a matter of fact, you did it more to even up with Dwyer than anything else, didn’t you?

“A. No, I was perfectly even with him before.

“Q. You was even with him before? Then did you do it to even up with Kester and Kettenbach?

“A. I had nothing to even up with them.

“Q. But if you hadn’t been mad at Dwyer you wouldn’t have done it, would you?

“A. Possibly I might.

“Q. It wasn’t for the purpose of vindicating the laws of the great commonwealth that you did it then, was it? A. Not exactly, no, sir.

“Q. It wasn’t because you had repented of anything wrong that you had done, or a kind of remorse, or anything of that kind?

“A. Oh, no, not in particular, no, sir.”

Obviously testimony so tainted cannot properly be accorded the weight and force of evidence from an undefiled source. It is further to be remarked that notwithstanding repeated and extended interrogation Steffey’s account of the alleged arrangement between him and Dwyer, upon which the plaintiff necessarily relies, is almost wholly wanting in detail. He remembers neither the time nor the place nor the circumstances of the conversation, and while it would not be strange if the exact time were forgotten, it is quite remarkable that as to a matter of so much importance he could not recall where the conversation took place or any of the attending circumstances. The contention of the Government is that the arrangement with Dwyer to take over these claims was made before any of the [323—80] entries were initiated, and upon direct examination Steffey so testifies, but upon cross-examination, at page 1295, he testifies as follows:

“Q. Now, what was the conversation you had with Dwyer regarding these Myers and Bonney and Jolley claims you speak of, the first conversation you had regarding it?

“A. I told him about these lands that I had

cruised out, and he told me to get somebody and locate on them and tell them we would give them \$200.00 after they had proved up on them.

“Q. And that is all that was said?

“A. Well, yes, in particular about that.

“Q. Now, when was that?

“A. I couldn't say when it was, the exact date.

“Q. Then what did you do?

“A. I went up and located them.

“Q. Dwyer told you that he would give them \$200.00 over and above expenses? A. Yes, sir.

“Q. Had Dwyer gone and looked at the claims?

“A. Some of them he did.

“Q. What claims did he go to look at?

“A. He went to look at Mrs. Loney's and Mrs. Jolley's claims.

“Q. Did he know that Mrs. Loney and Mrs. Jolley were going to take those claims?

“A. I think they had already taken them when he looked at them.

“Q. Hadn't they already filed on them?

“A. Yes, sir.

“Q. Hadn't they made their final proof too?

“A. I don't think they had.

“Q. To refresh your recollection, wasn't it after they made final proof and just before they made the deeds that Dwyer went up and looked at them?

“A. Possibly, but I don't recollect it.”

It would seem to be clear from this testimony, if taken as true, that the conversation relied upon as constituting the agreement between Dwyer and Steffey did not take place until after he had looked at

Mrs. Loney's and Mrs. Jolley's claims, and that he did not look at these claims until after they had filed on them. But only one of the eight claims was filed upon at a later date than the filings of Mrs. Jolley and Mrs. Loney. In this respect Steffey's testimony would tend to corroborate the claim of Dwyer that his offer to purchase the claims was made after they had been entered and proved up on.

Turning, now, to the corroborative evidence, we find that at page 1739 Robnett testified as follows:

“Q. Do you know Harvey J. Steffey?

“A. I do.

“Q. Did you ever have any direction from any of the officers of the Lewiston National Bank relative to honoring his checks? A. Yes, sir. [324—81]

“Q. Well, state what it was.

“A. Why, Mr. Kester came to me and told me that all of the checks of Mr. Steffey could be honored, as he was up in the timber doing some cruising, and also doing some locating for them, and at different times he was doing some buying, and his checks would be allowed, and whenever they came in they would be taken care of, and if there was an overdraft it was all right.”

This conversation is denied by Kester, and under all the circumstances of the case probably little weight should be accorded to it. It will be noted that the witness does not give the time when this conversation occurred, or, in any other way than as indicated in the general language itself, connect it with the claims under consideration. Just before so testifying the witness had stated that he was in

the confidence of Kettenbach and Kester, and discussed with them all of his timber transactions and a great many of theirs, but he does not testify that any of these entries were ever discussed with him by either Kester or Kettenbach.

The other witness called by the Government to testify upon the subject is John E. Chapman, teller of the Lewiston National Bank during the period under consideration. Apparently, he had no interest in the result of the suit, and, to say the least, it is not claimed that he was biased in favor of the defendants. Upon being interrogated by counsel for the Government, he stated that the defendant Kester, as cashier of the bank, authorized him to allow an overdraft in favor of Steffey. It was a general authorization for a small overdraft, but, as the witness put it, "for any large amounts coming in it was always put up to the cashier for his O. K." The witness remembers two or three occasions when Steffey's overdrafts were so submitted to Mr. Kester for his approval. He thinks the overdraft at one time ran up to between \$2,000.00 and \$3,000.00, and the witness then asked Kester whether he should honor the checks any longer. Upon cross-examination the witness testified that from time to time Steffey gave notes to cover [325—82] his overdrafts, but he is not sure that the notes covered the entire overdraft. The witness further stated that while he had no definite knowledge he was of the impression that Steffey had some property, consisting of timber lands, and that at different times Steffey "had a number of good deposits" in the bank. He testified:

“Q. Mr. Steffey was considered a good customer of the bank, was he? A. Yes.

“Q. And the bank never lost any money on him that you know of? A. Not that I know of.

“Q. And those overdrafts of Mr. Steffey’s were handled the same as overdrafts of anyone else, any other customer of the bank, were they not?

“A. So far as I know.

“Q. You consulted Mr. Kester about the large overdrafts just the same as you would consult him about— A. —about anyone else’s.”

The witness doesn’t remember the date of the overdrafts.

The testimony of Chapman relative to the giving of notes is in harmony with statements made by Steffey himself upon cross-examination. The details of his account with the bank are not disclosed by the record, and it is to be assumed from that fact that neither side introduced such account that it was not regarded as in itself tending to support either the view of the Government or the position of the defendants. It is apparent from what has been said that, aside from the testimony of Robnett and Steffey, the facts and circumstances surrounding the drawing of money from the bank to enable these several entrymen to procure title are quite as easily harmonized with the theory of the defendants’ ignorance of the relation existing between Steffey and the entrymen as with the theory that they knew of such relation. It appears from both the testimony of Steffey and Chapman that Steffey carried a current checking account with the bank, and that he

made considerable deposits from time to time, and that he was regarded as a man of some responsibility, and that his overdrafts were apparently authorized in the ordinary course of business and in accordance with the custom of the bank. The checks drawn by [326—83] Steffey for the purposes of these entries were indistinguishable in form from the checks which he drew for other purposes; they were not distinctively marked, nor were they put aside or segregated by the bank officials from the other checks drawn by Steffey. And in this connection it is to be borne in mind that all of the eight entries were not made upon the same date, and the money was not all required at the same time. The final proof in one case was made as early as January 22, 1906, and in one case as late as October 11, 1906. Another final proof was on June 6, 1906, two on June 19, 1906, and three on July 12, 1906. It will be observed that at no one time, therefore, was more than \$1500.00 required. No explanation is furnished as to why the bank required, and Steffey gave, notes from time to time to cover his overdrafts. Without such explanation it is not apparent why, if Steffey was practically doing business for and as the agent of the president and cashier of the bank, he should give his personal note to the bank for moneys expended upon their behalf. When called upon to give a note it would have been a very simple and a very natural thing for him to have said, "This overdraft represents expenditures upon your account, and therefore it is for you and not for me to take care of it."

There is another circumstance which is not entirely

clear. Steffey testifies that while there was no definite agreement as to what gain he should realize out of the scheme, it was understood that he was to share in the profits and was to be taken care of. He further testifies, however, that he got nothing out of it. Some of the entrymen testify that he was to be paid a location fee. As I read the testimony, he denies having charged or received any location fee, and also denies having gotten anything out of any of the transactions for himself. He further testifies that with possibly one or two exceptions the entrymen were to receive \$200.00 for their service in [327—84] entering and transferring title to the claims. Yet in the face of these facts it appears that the lands were sold to Kester and Kettenbach for various prices, and that the prices paid were as recited in the deeds themselves. The amount actually paid to the entrymen was in no case greatly in excess of \$200.00, yet, according to the recitals in the deeds, Kester and Kettenbach paid for one claim \$1,250.00, for two claims each \$1,000.00, for two claims each \$950.00, for one claim, \$900, for one claim \$850.00, and for one claim, consisting of only 80 acres, \$450.00. The record does not satisfactorily disclose what became of the difference between the purchase price and the expense of procuring title, together with the compensation paid to the entrymen.

Enough has been said to indicate that Steffey's version finds little corroboration in the attending circumstances. In such a condition of the record what are the probabilities, basing our estimate upon the uncontroverted circumstances of the case and the

motives which ordinarily control human conduct? Upon the one hand, it is undoubtedly true that the defendants were acquiring timber lands, and were lending encouragement and assistance to qualified entrymen, with the hope at least that they would be able to purchase the title after it passed from the Government into private ownership. At least in some quarters in the community the belief prevailed that so long as there was no contract in writing, a verbal agreement or a tacit understanding was not in violation of the law, and we are not without evidence of the fact that the idea was more or less generally entertained that so long as the entryman was qualified and the Government was being paid the price which it asked for the lands, no wrong would be done by an evasion of the technical requirements of the law. To what extent, if at all, the defendants themselves may have shared in or been influenced by such view, [328—85] which was more or less common, is not clear. Its prevalence may at least have made them less careful and vigilant than they otherwise would have been in furnishing money to entrymen before final proof and in purchasing lands after they passed to final proof. On the other hand, the record shows that in July, 1905, a considerable time before any one of these entries was initiated, and again in November, 1905, about the time the first entry was made, the defendants were indicted on charges of conspiring to defraud the United States out of its timber lands and of subornation of perjury in relation to the acquisition of title to certain timber lands. If not otherwise, the technical requirements of the

statute must have thus been forcibly brought to their attention, and they must have become conscious of the peril of participating in the fraudulent acquisition of timber lands and of the risk of purchasing titles so acquired. In the absence of some powerful motive or some strong incentive it would seem to be almost incredible that men of business and social standing in the community would, after indictment charging certain conduct to be criminal, and after being advised that the Government was engaged in an investigation of their transactions relating to the acquisition of timber lands, lend themselves to, or continue to participate in, a scheme violative of the very laws on which the pending indictments were based. No motive is suggested by the record other than that of financial gain, and it appears not only that at the time of these entries the price of timber lands was generally depressed, but that these particular lands were not highly valuable. The defendants were so much in doubt as to the value of at least two of the tracts that they hesitated to purchase at all, and took them at the small price named with considerable reluctance. Incentives to crime, therefore, seem to have been almost wholly wanting, and upon a painstaking consideration of the entire record, I am unable to find that the defendants had any knowledge or [329—86] reason to believe that Steffey had any unlawful arrangement or understanding with the entrymen. As to these entries, therefore, the complainant's prayer must be denied.

GENERAL CONCLUSION.

Summing up the conclusions hereinbefore stated, it is held that the bills in No. 388 and 407 should be

dismissed, and that the bill in No. 406 should be dismissed as to all of the claims and entries therein specified excepting those of Guy L. Wilson, Frances A. Justice, and Robert O. Waldman, and as to these three claims a decree will be entered cancelling the patents thereto. [330—87]

[**Testimony.**]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY —Nos. 388—406—407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Appearances:

PEYTON GORDON, Esq., Special Assistant to the Attorney General, for Complainant.

JAMES E. BABB, Esq., for Lewiston National Bank, Idaho Trust Company, Potlatch Lumber Company, Clearwater Timber Company and Frank W. Kettenbach.

GEO. W. TANNAHILL, Esq., for William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer.

Messrs. MORGAN & MORGAN, for Western Land Company.

EUGENE A. COX, Esq., for Elizabeth Kettenbach, Curtis Thatcher, Elizabeth W. Thatcher, and Elizabeth White.

These causes came regularly on for hearing this the 22d day of August, A. D. 1910, at Lewiston, Nez Perce County, Idaho, in the courtroom of the District Court of said Nez Perce County, Idaho, before Honorable Warren Truitt, Special Examiner, heretofore duly appointed, the solicitors for the respective parties being present, the hearing commencing at ten o'clock A. M. of said day. [331*—1†]

Whereupon the parties stipulated and agreed in open court as follows:

[Stipulation Concerning Objections and Exceptions to Testimony and Evidence, etc.]

The parties agree that upon the taking by complainant, before the Special Examiner heretofore appointed, or before any examiners who may be hereafter appointed, or before any person or persons who may be agreed upon by the parties to act in such capacity, of any evidence to be offered or used in the cause entitled, *The United States of America, Complainant, vs. William F. Kettenbach, and Others, Defendants, in Equity, No. 406*, all objections, exceptions and other proceedings had or taken upon behalf of any of the defendants in the causes above mentioned shall be held and deemed to have been taken severally also on behalf of each of the following named defendants, to wit, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth Kettenbach, Elizabeth White, and The Western Land Company, a corporation, and the Clearwater Timber Company,

*Page-number of Original Certified Transcript of Record.

†Original page-number of Testimony as same appears in Original Certified Transcript of Record.

Potlatch Lumber Company, Idaho Trust Company, and Lewiston National Bank, and the said defendants last named shall have the benefit of all such objections, exceptions and proceedings so taken on behalf of such other defendants with the same force and effect as if the same had been taken severally for said last-named defendants by their respective solicitors of record herein. And the parties further agree that if, during the taking of any such evidence, the solicitors of the said last-named defendants, or the solicitor of any of said last-named defendants shall at any time be absent from the place where such evidence is being taken, then the solicitor or solicitors of any of the other defendants present may take any proceedings on behalf of the defendant or defendants represented by such absent solicitor or solicitors with the same force and effect as if such proceedings had been taken by such absent solicitor or solicitors.

It is further stipulated in open court by and between all the parties hereto that the portions of the transcript of the evidence heretofore taken at the trials of William Dwyer, William F. Kettenbach, George H. Kester, and Clarence W. Robnett, and which made up the records in said cases on appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in said cases, entitled in said appellate court, William F. Kettenbach, George H. Kester and William Dwyer vs. [332—2] The United States, and numbered 1605; William Dwyer vs. The United States, numbered 1606; and Clarence W. Robnett vs. The United States, numbered 1607,

to which any witness' attention may be called and with reference to which any such witness may be interrogated at the hearing now being had, shall be deemed in evidence with the same force and effect as though the stenographer taking such evidence and transcribing the same had testified in open court at the present hearing that such transcript was a true and correct statement of the evidence given by any such witness at the trials aforesaid.

It is further stipulated in open court by and between all the parties hereto that the portions of the transcript of the evidence heretofore taken at the trial of William F. Kettenbach, George H. Kester and William Dwyer, in the District Court of the United States for the District of Idaho, Northern Division, commencing on Tuesday, February 15th, 1910, at Boise City, Idaho, before Honorable Frank S. Dietrich, Judge of said Court, and a jury, in cases No. 605, 607, 615, 635, and 637, entitled *The United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer*, to which any witness' attention may be called and with reference to which any such witness may be interrogated at the hearing now being had, shall be deemed in evidence with the same force and effect as though the stenographer taking such evidence and transcribing the same had testified in open court at the present hearing that such transcript was a true and correct statement of the evidence given by any such witness at the trials aforesaid.

The purpose of the last aforesaid stipulations is to obviate the necessity of calling the several stenog-

raphers who took the evidence in open court in said cases in shorthand to prove the said records are accurate and correct reports of the evidence aforesaid, and shall in no way be deemed a waiver by any of the parties hereto of any objection to any part of the evidence herein referred to, as to its competency, relevancy or materiality, made at the time the witnesses are being interrogated in regard thereto, at the present hearing.

And it is further agreed that said stipulation shall in no way be deemed a waiver of the objection of either of the parties to these actions to the evidence of any witness given at the former trials herein referred to, made at the time such evidence is offered, on the ground that it is incompetent, irrelevant or immaterial.

An adjournment was thereupon taken until tomorrow morning at ten o'clock. [333—3]

[Proceedings Had August 23, 1910, Before Special Examiner.]

On Tuesday, the 23d day of August, 1910, at ten o'clock A. M., the hearing was resumed.

The SPECIAL EXAMINER.—Mr. Gordon, in regard to these exhibits, what is your practice? Do you just file them with the Stenographer and have them marked?

Mr. GORDON.—Why, it has been the practice that when you take depositions away from the court, the counsel often retain them and file them with the court when they return them there themselves; but it would be agreeable to me if they could be left with

the Examiner, and the Examiner forward them with the record.

The SPECIAL EXAMINER.—The usual practice where I have been acting in this capacity, in any matter like a stipulation or anything of that kind, I have marked it filed as an Examiner and put it right with the original files or papers; but all exhibits have been identified by the Stenographer and retained with the testimony and reported right up. Now, I don't know whether that suits your practice.

Mr. GORDON.—Why any way suits me.

The SPECIAL EXAMINER.—That is the way we have done in some cases. I don't know whether you have been before me in these kind of cases or not, Mr. Tannahill; but the Stenographer then has the entire record.

Mr. TANNAHILL.—I think that would be more convenient and more satisfactory.

The SPECIAL EXAMINER.—Of course, as Mr. Gordon suggests, where they are taken away perhaps the attorneys might retain them and file them later on. But if the Stenographer has the entire record he takes charge of the entire record and is responsible for it.

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—And if it is left with someone else, it is not as liable to be kept as straight as the Stenographer will keep it; [334—4] and if that is satisfactory you can make that arrangement, that all exhibits be kept by him, and that they be marked by him, so that he knows what the paper is and just retain it.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—If your Honor please, I make the motion that the witnesses on either side will be excluded from the courtroom during the hearing and during the testimony of any other witness. I assume that that is agreeable to counsel for the defendants?

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—Well, that being the usual proper order in a case where it is desired, why the witnesses will take notice that all witnesses who are to appear in this case will be excluded from the courtroom, and will be called by an officer whenever they are required. They can keep themselves within distance just about the courtroom here and then whenever you are wanted an officer will call you.

Mr. GORDON.—I will ask all witnesses to keep themselves in readiness outside where they can be called.

The SPECIAL EXAMINER.—There is another matter: Mr. McLain is the regular Court Reporter, and I suppose sometimes in having new reporters you have them sworn. Do you want to have that done? Do you care to have the oath administered?

Mr. GORDON.—Why, I understand that Mr. Hamer is also a regular court reporter; but it is agreeable to me that both of them take the testimony without being sworn.

Mr. TANNAHILL.—That is satisfactory.

The SPECIAL EXAMINER.—Well, that is perfectly satisfactory, and the record will show that.

It was stipulated and agreed by and between counsel for the respective parties that the testimony to be taken at this hearing shall be taken down in shorthand by Charles W. McClain and Daniel Hamer, and that the same shall be by them transcribed into longhand, or typewriting, [335—5] and that it shall not be necessary to have the same read over to or signed by the various witnesses who may testify herein.

The following stipulation was presented and agreed to in open court:

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY.—Nos. 388-406-407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Stipulation [Concerning Testimony and Evidence].

WHEREAS, Special Examiners heretofore have been appointed by the Court to take and hear the testimony in all of the above-entitled causes, and each of said causes charge conspiracy to defraud the United States of certain of its timber lands, and the Bill of Complaint in each of said causes specifically describes the several tracts of land sought to be recovered by the Government, and refers to the several patents sought to be cancelled;

With the view of speeding said causes to a hearing, and for the purpose of economy in the taking

of the testimony in said causes, and making of the record in the same for the Court, it is hereby stipulated and agreed by and between the respective parties to the above-entitled causes that the testimony of all of the witnesses of all the parties to the said causes produced and taken before said examiners heretofore appointed, or before any examiners or persons hereafter appointed by said Court, or agreed upon between the parties to these causes to act in such capacity in all of said causes shall be considered as having been taken in each and all of said causes, and shall go to make up the record in each and all of said causes, with the same force and effect as though said causes were consolidated, subject, however, to the defendants' objection made at the time of the introduction of any evidence so offered that the same is incompetent, irrelevant and immaterial.

It is further stipulated by and between the parties to said causes [336—6] that the evidence offered by and on behalf of any of said parties in any of said causes shall be considered as offered and received in evidence in all of said causes unless at the time of the offering of said evidence the party so offering the same shall specifically specify as to

which of said causes the same is offered.

(Signed:) PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

JAMES E. BABB,
Solicitor for Lewiston National Bank, Idaho Trust
Company, Potlatch Lumber Company, Clear-
water Timber Company, Frank W. Kettenbach,
Defendants.

GEO. W. TANNAHILL,
Solicitor for William F. Kettenbach, George H. Kes-
ter, William Dwyer, Elizabeth White, Edna P.
Kester, Martha E. Hallett, Kittie E. Dwyer,
Defendants.

MORGAN & MORGAN,
Solicitors for Western Land Company, Defendant.
EUGENE A. COX,
Solicitor for Elizabeth Kettenbach, Curtis Thatcher,
Elizabeth W. Thatcher, and Elizabeth White,
Defendants.

[Testimony of Guy L. Wilson, for Complainant.]

GUY L. WILSON, a witness called in behalf of
the complainant, being first duly sworn, testified as
follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Guy L. Wilson, is it?

A. Yes, sir.

Q. Where do you reside, Mr. Wilson? [337—7]

A. Clarkston.

Q. In the State of Washington?

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. How long have you resided in Clarkston?

A. Ten years.

Q. Are you married? A. Yes, sir.

Q. Of what does your family consist?

A. My wife and little girl.

Q. How long have you been married?

A. Eight years.

Q. What was your occupation in April, 1904?

A. Electrician.

Q. And are you following the same vocation now?

A. Yes, sir.

Q. Were you working for wages in 1904?

A. Yes, sir.

Q. And what was your salary at that time?

A. \$75.00 a month at that time.

Q. And were you working for the same concern by which you are employed now? A. Yes, sir.

Q. And that is the Lewiston-Clarkston—

A. Improvement Company.

Q. Mr. Wilson, I show you Timber and Stone Land Sworn Statement dated April 25th, 1904, signed Guy L. Wilson, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And whether you filed the same in the land office at Lewiston about the date it bears?

A. Yes, sir. [338—8]

Q. I show you also the Non Mineral Affidavit of Guy L. Wilson, dated the same date, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Guy L. Wilson, dated July 13th, 1904, signed Guy L. Wilson, and

(Testimony of Guy L. Wilson.)

ask you if that is your signature to that paper?

A. Yes, sir.

Q. The paper last identified was the testimony that you gave on final proof? A. Yes, sir.

Q. I show you the cross-examination of Guy L. Wilson at the final proof, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the Receiver's Receipt, dated July 13th, 1904, and the Register's Certificate, of the same date, issued by those officials at the Lewiston land office to Guy L. Wilson, and ask if those papers were issued to you the date they bear?

A. Yes, sir.

Q. Mr. Wilson, who first spoke to you about taking up a timber claim? A. My father-in-law.

Q. And what was your father-in-law's name?

A. David Justice.

Q. And did he at that time reside at Clarkston, Washington? A. Yes, sir.

Q. And did you live with him? A. No, sir.

Q. Is Mr. David Justice alive now? A. No, sir.

Q. Was this conversation you had with Mr. Justice brought about [339—9] by yourself, or did he suggest it to you?

Mr. TANNAHILL.—If the Court please, we desire to object to any conversation with David Justice, on the ground that it is incompetent, irrelevant and immaterial, hearsay, not the best evidence, and the defendants cannot be bound by it; and we desire to object to any evidence in relation to the entryman's timber claim as the same applies to case

(Testimony of Guy L. Wilson.)

No. 388 and 407, upon the ground that it is irrelevant, incompetent and immaterial, and that it does not tend to prove or disprove any of the issues in either of those causes.

Mr. GORDON.—My last question was merely preliminary.

Mr. TANNAHILL.—Very well. Then we desire that this same objection go to all the witness' evidence, in order to avoid the necessity of repeating it—this last objection.

The SPECIAL EXAMINER.—Yes. The Stenographer can make that entry there, showing that the objection will apply to other similar testimony.

The last question was thereupon repeated by the Reporter.

WITNESS.—He had talked to me about it.

Mr. GORDON.—Q. Do you know Mr. William Dwyer, one of the defendants in this case?

A. Yes, sir.

Q. Did you ever talk with him about taking up a timber claim before you filed on one?

A. Yes, sir.

Q. Where was that conversation?

A. In his house.

Q. Where is his house?

A. At that time it was in Clarkston.

Q. And how long was it prior to the making of the application to enter one of these claims?

[340—10]

A. It must have been four or five months.

Q. What was said at that conversation?

(Testimony of Guy L. Wilson.)

A. I went up there to see him about getting this land, or taking a claim and to make arrangements to get the money to prove up with.

Q. I can't hear you.

A. To make arrangements to get the money to prove up with.

The SPECIAL EXAMINER.—Speak just a little louder, Mr. Wilson.

Mr. GORDON.—Q. Now, what arrangement did you go there to make with Mr. Dwyer about getting the money to prove up with?

Mr. TANNAHILL.—We object to that upon the ground that it is not the best evidence. The witness should be asked to state what was said between himself and Mr. Dwyer.

Mr. GORDON.—Answer the question, please.

A. I went to see him to get him to locate me on a claim, and see if he could procure the money for me to prove up with.

Q. Was Mr. Dwyer in the business of furnishing people money with which to prove up on timber claims?

A. I don't know. He was a locator.

Q. Well, what was said by Mr. Dwyer when you saw him on that occasion?

A. He said he thought he could borrow the money for me and get a claim in.

Q. Was that all that was said?

A. He said that I would have to pay him for locating me on the timber claim, and he told me about what the claim would be worth. That's about all

(Testimony of Guy L. Wilson.)

that I can remember that was said there.

Q. What did he tell you the claim would be worth?

A. Well, he said that after expenses would be paid and I had paid him for locating it would probably be worth \$150.00 to me.

Q. Is that the expression that he made? [341—11]

A. As near as I can remember it.

Q. Did Mr. Dwyer tell you that he would pay all your expenses, and that there would be \$150.00 in it for you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—He told me that—

Mr. GORDON.—Answer the question yes or no.

A. Well, I can't answer it yes or no and answer it as I want to.

Q. Please read the question again.

The SPECIAL EXAMINER.—Just read the question over, and if you can answer by yes or no, witness, you should do that, and then if you want to make any explanation after having answered the question it is all right to do so; but if it is a question that you can answer by yes or no of course it is the proper thing to answer that way. It makes a better record.

WITNESS.—Then if you will ask the question again.

The last question was repeated by the Reporter.

WITNESS.—No; I don't remember it just that way—after expenses were paid and the timber was sold that I would get about that much.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. That was the first conversation you had with him?

A. Yes, sir, as near as I can remember.

Q. Wasn't Mr. Dwyer to furnish all the expenses?

Mr. TANNAHILL.—The same objection, upon the ground that it is leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. He was to pay your expenses of going to the timber, was he not?

A. Yes, sir.

Q. And pay your filing fee?

A. No; I don't know as I remember anything being said about that. [342—12]

Q. Well, was the expression to pay all your expenses? A. Yes, sir.

Q. And that was before you ever went to view the land? A. Yes, sir.

Q. And what were you to do with the land to get this \$150.00? A. I was to sell it.

Q. Who were you to sell it to?

A. Well, I didn't know at that time.

Q. Who was to control the negotiations for the sale?

A. Well, I suppose Mr. Dwyer was to sell it for me.

Q. Why did you wait for four months after that conference with Mr. Dwyer before you went to view the timber?

A. I think that the timber wasn't open for entry at that time.

Q. How long after that conversation you have related was it that you went into the timber?

(Testimony of Guy L. Wilson.)

A. I would just like to correct that other answer. I think that we went—it was after that; it was in two or three weeks, probably, that we went to look at the timber.

Q. Well, was there any reason why you didn't go the next day?

A. No, sir, no particular reason.

Q. Who notified you at the time you were to go to view this timber?

A. Well, I think my father-in-law told me, and Mr. Dwyer told me.

Q. Who arranged for the party—who made up the party?

A. Mr. Dwyer was taking the party up there.

Q. And did he tell you that on a certain day that he would take you into the timber?

A. He told me he was going and if I wanted to go I could go. He told me he was going, and if I cared to go I could go.

Q. How long was that before you went?

A. Well, I couldn't say. [343—13]

Q. Was it the day before, or the night before, or how long?

A. Well, it was within a day or two.

Q. Well, now, please state the circumstances and the facts that transpired on that trip, who was of the party, etc.

A. There was me, my mother-in-law and father-in-law.

Q. Well, now, name those.

A. Mr. and Mrs. Justice and Mr. O'Brien.

(Testimony of Guy L. Wilson.)

Q. What Mr. O'Brien?

A. Mr. O'Brien that lives in Clarkston, and Mr. Hopper, and myself.

Q. Now, Mrs. Justice, is it Mrs. Frances Justice?

A. Yes, sir.

Q. And what is her name now?

A. Mrs. Clausen.

Q. How do you spell that?

A. C-l-a-u-s-e-n.

Q. Where did you go from Lewiston to view the timber? A. We went up by Pierce City.

Q. Now, tell how you got there. You didn't walk—just please tell what happened. Don't make me ask all these questions.

A. We got on the train and went to Orofino and stayed there that night, and then we took horses and we went to Pierce City the next day, and the next day we went out to this timber, and that was about twelve miles, or quite a long way, I couldn't tell exactly how far it was, and we went out there, and we was there some time, a couple of hours, probably, and then we went back to Pierce City.

Q. Did you pay any railroad fare?

A. No, sir.

Q. Did you pay any hotel trip on that excursion?

A. No, sir.

Q. —any hotel bill on that excursion? [344—14]

A. No, sir.

Q. Did you pay for the use of the team driving from Pierce? A. No, sir.

Q. Did you make any arrangements for the team,

(Testimony of Guy L. Wilson.)

or was it there in waiting?

A. No, sir; I didn't make any arrangements at all.

Q. Who did you see when you got out into the timber?

A. A man there by the name of Mr. Bliss was the only one I saw.

Q. Did Mr. Dwyer go with you? A. Yes, sir.

Q. Did he leave Lewiston with you?

A. Yes, sir.

Q. And did you stop at his camp up in the timber?

A. Yes, sir.

Q. Over night? A. No, sir.

Q. How far was the claim on which you were located from Mr. Dwyer's cabin?

A. I don't know.

Q. Were you at the cabin? A. Yes, sir.

Q. Did you ever go to the claim?

A. I suppose that I rode through it when I was going in there.

Q. Well, why did you suppose that?

A. Well, I knew that that was the timber, or supposed it was the timber. Mr. Dwyer said that was the timber we were to file on.

Q. You drove through how much timber?

A. Well, it was all timber, but then this was within I guess a couple of miles of his claim.

Q. And did he point out any particular claim?

A. I don't remember of any. [345—15]

Q. Did he just point out to the forest and say "This is the timber on which you are going to file your location"?

(Testimony of Guy L. Wilson.)

A. Well, I don't remember exactly what was said there at that time.

Q. Mr. Wilson, don't you remember that you never did go to view that timber claim on which you filed?

A. Not any more than I have told you.

Q. Do you remember whether or not Mr. Dwyer stood in his cabin and waved his hand out towards some timber and said that was the timber upon which you were going to file?

A. No, I can't say that I remember that.

Q. Then you returned to Lewiston?

A. Yes, sir; I returned to Pierce, and then to Orofino, and then to Lewiston.

Q. And you paid none of your expenses coming back either? A. No, sir.

Q. And it was several months after you returned to Lewiston before you filed on this land?

A. Yes, sir; it was the following spring I filed.

Q. Who advised you of the time that you were to file on this timber?

A. Mr. Dwyer told me that there was a line-up in the land office, and if I wanted to file to get in line.

Q. Did he just make the statement "if you want to file to get in line"; or did he tell you to get in line and file?

A. Well, I don't remember just exactly; but that was the substance of what he told me.

Q. Did you have any arrangement with Mr. Dwyer before you went to the timber as to the payment of a locating fee?

(Testimony of Guy L. Wilson.)

A. He told me I would have to pay him \$100.00 to locate me.

Q. Did he tell you that before he went to the timber? A. Yes, sir. [346—16]

Q. Did he tell you that he would furnish you that \$100.00? A. No, sir, I don't think he did.

Q. He was to furnish all the money, though?

A. Yes, sir.

Q. And you felt that you had obligated yourself to pay that \$100.00? A. Well, I suppose I would.

Q. Now, don't say suppose. Answer the question directly, please.

Mr. TANNAHILL.—We object to that. The witness is answering his questions, and answering them fully, and counsel has no right to make any such remarks as that to the witness.

Mr. GORDON.—I have a right to make just such remarks as that. I asked him for a direct answer, and he said "I suppose," and I want a direct answer.

WITNESS.—Yes, sir.

Q. You say that is your understanding?

A. Yes, sir, that is my understanding.

Q. You felt under obligations to pay him that \$100.00? A. Yes, sir.

Q. Who arranged for the preparation of this sworn statement that you filed in the land office?

A. The filing papers?

Q. Yes.

A. Why, they were made out in Mr. Smith's office.

Q. In Mr. I. N. Smith's office?

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. My question was, who arranged with Mr. Smith for the preparation of those papers?

A. I don't know.

Q. Did you make any arrangement with him?
[347—17] A. No, sir.

Q. How did you know that Mr. Smith was preparing those papers for you?

A. Well, I couldn't tell you now.

Q. Did you go to Mr. Smith's office to get them?

A. Yes, sir.

Q. Who told you to go there?

A. Well, I don't know now who did tell me.

Q. Didn't Mr. Dwyer tell you to go there and get those papers? A. I couldn't say.

Q. Somebody told you to go there and get them, didn't they? A. Yes, sir.

Q. Did you pay Mr. Smith any fee for preparing those papers? A. No, sir.

Q. Mr. Smith's office was in the same building as the land office was at that time, was it not?

A. Yes, sir.

Q. On the same floor as the land office?

A. Yes, sir.

Q. And you took the papers from Mr. Smith's office and went immediately to the land office to file them?

A. Yes, sir, the same day. I don't know that—

Q. Well, I didn't mean to use the expression "immediately." Did you see Mr. Dwyer in the building in which the land office and Mr. Smith's office

(Testimony of Guy L. Wilson.)

was, just after you received those papers from Mr. Smith?

A. Yes; I think he was there that day.

Q. Did he go with you to the land office when you filed the papers?

A. Well, I couldn't say whether he was in the land office or not.

Q. Where did you get the filing fee that you paid in the land [348—18] office when you filed your sworn statement and the other original papers?

A. Mr. Dwyer gave me the papers.

Q. Gave you what?

A. The papers. I didn't quite catch the question. The SPECIAL EXAMINER.—Just repeat the question.

The Reporter thereupon repeated said question.

WITNESS.—Mr. Dwyer gave that to me.

Mr. GORDON.—Q. Gave you what?

A. The fee.

Q. Did he give you the papers too?

A. No, sir; I think I had gotten the papers of Mr. Smith—I am not sure, though.

Q. Had you just gotten them when he gave you the filing fee?

A. Well, I got them that same day, I don't know just how long.

Q. Well, you didn't intend to pay the filing fee, did you? A. No, sir, I don't think so.

Q. And you went to Mr. Smith's office and got the papers and waited for Mr. Dwyer to give you the money to pay the filing fee, didn't you?

(Testimony of Guy L. Wilson.)

A. Yes, sir.

Q. How much was that fee?

A. I can't tell you—somewheres about \$16.00 or \$17.00, I think.

Q. How long did you remain at the land office before you filed those papers?

A. I was— Remain at the land office?

Q. At the land office? A. I don't know.

Q. How long before the day that you could file those papers, that the land was open to entry, was it that you went to the land [349—19] office and formed yourself in line?

A. It was about a week, I think.

Q. How many people were in the line when you arrived there?

A. There must have been 15 or 20.

Q. You were employed at that time, were you not?

A. Yes, sir.

Q. How long did you remain in the line?

A. Not so very long—an hour and a half a day, possibly.

Q. Did you when you went there intend to remain in the line the seven days?

A. No, sir—I couldn't. I was working; I couldn't stay there.

Q. Well, did you make any arrangements with somebody to hold your place? A. Yes, sir.

Q. Who suggested that to you?

A. Well, I think Mr. Dwyer told me if I wanted to hold my place that I would have to get somebody else, or I would have to get someone else to stay there in line.

(Testimony of Guy L. Wilson.)

Q. Did you get someone or did Mr. Dwyer get someone? A. I got someone.

Q. Who held your place, or who held your position? A. Mr. Case.

Q. Well, he held your place for several days, did he? A. Yes, sir.

Q. But where did you go to procure the services of Mr. Case to hold your position?

A. Why, he was staying at my place at that time, and of course I went home and got him.

Q. Who held your place in line while you went home? A. Well, I don't know as anybody did.

Q. Was there any arrangement made between you and Mr. Dwyer as [350—20] to who should pay for the services of Mr. Case?

A. No, I can't say positively now just about that. I paid him in the end.

Q. You did what?

A. I paid him in the end.

Q. Well, who paid him in the beginning?

A. Mr. Dwyer paid him, and I paid Mr. Dwyer.

Q. Mr. Dwyer gave you a check for that purpose, didn't he? A. Yes, sir.

Q. Of fourteen dollars and something?

A. I think it was \$14.00.

Q. That was how much a day? A. \$2.00 a day.

Q. After the filing of your papers in the land office did you have any conversation with Mr. Dwyer as to the final proof money?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

(Testimony of Guy L. Wilson.)

WITNESS.—I must have had a conversation, but I don't remember now just what it was.

Mr. GORDON.—Q. Well, did he come to see you with the money when it came time to make proof, or did you go to see him?

A. Well, I met him in the land office, in Mr. Smith's office, and got the money, but I don't remember just how I happened to go there. Of course, I know somebody must have told me, but I don't remember just when it was or any of the particulars about it.

Q. Had Mr. Smith ever attended to any business for you?

A. No, sir, not outside of making those papers.

Q. And you didn't procure him to do that?

A. No, sir.

Q. And was there any arrangement that you should go to Mr. [351—21] Smith's office to meet Mr. Dwyer to get the money to make final proof?

A. None that I know of.

Q. Well, how did you happen to go there, then?

A. Well, I expect Mr. Dwyer told me to meet him there, or something like that. I am not—

Q. Had you any talk with Mr. Dwyer, prior to the day of making final proof, about the final proof money? A. Prior to the day?

Q. Yes? A. I don't remember of any.

Q. Do you remember of an occasion of Mr. Dwyer coming to your house with his wife to see you about the final proof?

A. Mr. Dwyer and his wife were there at one time, yes, sir.

(Testimony of Guy L. Wilson.)

Q. And don't you know that he came to see you for that purpose?

A. Well, I can't recall just exactly. I know he came there to see me, but I don't remember all that was said. I don't know whether that was mentioned or not.

Q. Do you remember anything that was said on that occasion?

A. No, I don't know as I can. I don't know as I remember it now.

Q. Do you remember that Mr. Dwyer and his wife drove up there one evening, shortly before the time you made final proof, and were waiting when you came home from your work? A. Yes, sir.

Q. And do you remember whether or not Mr. Dwyer told you he had come to see you and talk with you about the questions that you were to answer in making your final proof?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial; and we desire that this same objection go to all of the examination of the witness relative to the final proof or any questions in relation to the making of the final proof.

WITNESS.—I remember Mr. Dwyer coming there and we had a conversation, [352—22] but I don't know—I couldn't say positive what that conversation was now.

Mr. GORDON.—Q. Do you know what it pertained to—what was discussed?

A. It pertained something to answering questions, but I couldn't recall the conversation.

(Testimony of Guy L. Wilson.)

Q. Do you remember whether he went over the questions that you were to answer, as to where you were to get the money, or where you got the money to make this final proof?

A. I remember going over the questions, I don't remember just all of them. I don't know just what was said there.

Q. Well, tell as much of it as you can remember.

A. I remember of him being there and telling me how I might answer some of the questions.

Q. Now, what questions did he tell you how you should answer?

A. Well, he told me something about answering where I got the money and how long I had had it, and I think that's about all that I remember.

Q. What did he tell you to say about it?

A. Well, as near as I can remember he told me—of course, I had borrowed this money, and the money was mine, and to say it was mine.

Q. Is that what he told you to say?

A. That is as near as I can remember.

Q. Now, when Mr. Dwyer had paid you that visit why you hadn't gotten the money at that time, had you? A. No, sir.

Q. Who was present at that conversation besides yourself and Mr. Dwyer? A. My wife was all.

Q. Mrs. Dwyer was present?

A. Yes, sir, Mrs. Dwyer was there. [353—23]

Q. Now, do you remember whether there was anything said at that conversation relative to what you should say as to whether or not you had an agree-

(Testimony of Guy L. Wilson.)

ment to sell that land?

A. No, sir, I don't remember anything about that.

Q. You have no remembrance whatever?

A. Not of that, no, sir.

Q. Do you remember whether he argued the question with you that you could conscientiously say that you didn't have an agreement because it wasn't in writing—merely a verbal agreement between you and him?

A. Mr. Dwyer told me some time or other in our discussions that I had no agreement with him, but I don't know whether at that time he did or not.

Q. Now, what brought up the contention whether or not you had an agreement with him?

A. Probably it must have been how I was to answer the questions, likely, in the land office.

Q. Do you remember of him telling you that you didn't have an agreement with him because it wasn't in writing?

A. No, I can't say that I remember it just that way.

Q. Do you remember asking him whether or not you would have to perjure yourself?

A. Yes, sir, I think I asked him that question.

Q. And that he told you no, or words to that effect; that it wasn't an agreement because it was a mere verbal arrangement between you and him, and that nobody knew anything about it but you and him?

Mr. TANNAHILL.—We object to that as leading and suggestive, and irrelevant and immaterial.

WITNESS.—No, sir. I remember of him telling

(Testimony of Guy L. Wilson.)

me that there was no agreement; but, as I said before, I don't remember whether it was at that time or some other time.

Mr. GORDON.—Q. Do you remember how he argued why you had no agreement? [354—24]

A. Why, I don't know as we argued any about it. I can't say whether it was that time. I don't remember very much about it, what was said at that time.

Q. Well, don't you remember that you had a similar talk with—or a talk with Mr. Dwyer on the same subject, before you made your sworn statement?

A. Well, he has told me—he had told me two or three times that I didn't have any agreement with him.

Q. Didn't he tell you that before you made your sworn statement? A. I think so.

Q. And didn't he tell you that you were taking it up for your own use and benefit, because you would be benefitted by it? A. Yes, sir.

Q. After this last conversation you had with him before making proof, do you remember whether there was any arrangement made where you should meet Mr. Dwyer to get the money to make your proof?

A. No, sir, I have no remembrance of how— Of course, I know I must have been told to go there—I knew I was going to get the money, but I don't remember much more than that.

Q. And you went to Mr. Smith's office and met Mr. Dwyer at his office? A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. And was there any money given you at that time?

A. Yes, sir. I was there given the money to—

Q. How much was given you?

A. The money to make final proof, and \$100.00 more.

Q. And how much was that altogether?

A. Well, that was something over \$500.00.

Q. And what was said about the \$100.00 more that you referred to?

A. Well, I was to—that was my locating fee; I was to pay that back. [355—25]

Q. Now, state exactly what was said about that.

A. Mr. Dwyer told me to give it back to him, and I did, and he said I had paid him for locating me.

Q. Repeat that, please.

A. Mr. Dwyer, after he gave me this \$100.00, why he told me to give it back to him, and I did, and he said I had paid him for locating me.

Q. In other words, he gave you an extra \$100.00, and then said “Now, give me that back and that will pay my locating fee”? Is that correct?

A. Something to that effect.

Q. Do you remember whether the money that was given you was in gold or paper money?

A. I don't remember. Part of it was in paper, I know.

Q. Wasn't the \$100.00 a hundred dollar bill?

A. Yes, sir.

Q. And wasn't the \$400.00 in gold?

A. Well, I am not sure what the \$400.00 was.

(Testimony of Guy L. Wilson.)

Q. What is your best recollection?

A. Well, I couldn't say positive. It might have been gold or it might have been paper.

Q. And did you go to the land office immediately from Mr. Smith's office and make your final proof and pay this \$400,00 in the land office?

A. Some time in the morning I done that, yes, sir.

Q. And they gave you a receipt for it at the land office? A. Yes, sir.

Q. And what did you do with that receipt?

A. I took it with me and went over to Mr. Kettenbach's office, and I made a deed there.

Q. Now, let me get this straight: Which of the Kettenbachs did [356—26] you go to?

A. Mr. Otto Kettenbach.

Q. Mr. Otto Kettenbach? A. Yes, sir.

Q. And do you know the kinship he bears to Mr. William F. Kettenbach? A. No, I don't.

Q. Now, at the time that Mr. Dwyer gave you the \$400.00, did you give him any security for it at that time? A. Yes, sir.

Q. Right at that time? A. Yes, sir.

Q. Did you give it to him before you paid the money into the land office or afterwards?

A. Before I paid the money.

Q. When were you to repay that note?

A. I didn't know at that time. That note was made payable on demand, I think.

Q. And to whom was the note made payable?

A. It was made to Kester and Kettenbach, I think.

Q. William F. Kettenbach and George H. Kester,

(Testimony of Guy L. Wilson.)

or was it just Kester and Kettenbach?

A. I am not sure how it was.

Q. And did that note bear interest?

A. I couldn't say whether it did or not.

Q. And you say that was just before you made your proof? A. Yes, sir.

Q. And you made your proof in the forenoon of that day? A. Yes, sir.

Q. And you went directly from the land office to Mr. Otto Kettenbach's office and made a deed?

A. No, not directly, I think. [357—27]

Q. Well, now, state how long it was, if you remember? A. Well, it was probably two hours.

Q. Two hours? A. Yes, sir.

Q. What were you doing in that two hours?

A. I went to dinner.

Q. Then you didn't go to Mr. Otto Kettenbach's till after dinner? A. No, sir.

Q. And was it arranged that you were to go to Mr. Otto Kettenbach's, before you went to dinner?

A. Yes, sir; I think so.

Q. Was it arranged before you went to the land office? A. No, sir; not that I know of.

Q. Well, you say "not that you know of"?

A. No, sir. Why, no.

Q. You don't know whether anybody else made any arrangement? A. No, sir; I don't think so.

Q. Now, did Mr. Dwyer go to the land office with you when you made your proof?

A. I think Mr. Dwyer was around there. I am not sure whether he was in the land office or not.

(Testimony of Guy L. Wilson.)

Yes, I think he was.

Q. And when did you make the arrangement to go to Mr. Kettenbach's office?

A. Why, I think after I had proven up.

Q. Well, between the time you proved up and when you went to dinner, is that right?

A. Yes, sir; I think so.

Q. Well, how long was that?

A. Well, it wasn't very long; it was inside of an hour.

Q. And was that the first that was said to you about selling [358—28] your land?

A. That is the first, yes, sir, outside of that one conversation at his house.

Q. That was the first time he went to see you?

A. Yes, sir.

Q. Who told you to go to Mr. Otto Kettenbach's office? A. I think Mr. Dwyer told me to.

Q. And did you know what you were to do when you went to Mr. Kettenbach's office? A. Yes, sir.

Q. Well, please tell what it was—what the arrangement was?

A. Why, I can't remember exactly. I knew I was to go over there and make out a deed; that's all I knew.

Q. And what were you to get for making out that deed? A. I was to sell the land there.

Q. Who were you to sell it to?

A. Well, I didn't know until the deed was made out who I was to sell it to.

Q. Well, to whom was the deed made out?

(Testimony of Guy L. Wilson.)

A. The deed was made out to Kester and Kettenbach.

Q. Which Kester?

A. Well, I don't know. I don't remember. I remember the names of Kester and Kettenbach being on the deed.

Q. Do you know of any other Kester and Kettenbach than William F. Kettenbach and George H. Kester?

A. Well, there is other Kettenbachs, but I think it was George H. Kester and William F. Kettenbach, but I don't remember the initials on the deed.

Q. Now, when you made out this note to Mr. Dwyer, what did you do with it?

A. I gave it to him. [359—29]

Q. And when you made out the deed—which was the same day, wasn't it? A. Yes, sir.

Q. What did you do with the deed?

A. I turned it over to Mr. Dwyer.

Q. When did you see the note again?

A. I never seen the note after that.

Q. Do you know what became of the note?

A. Yes, sir.

Q. What became of it? A. My wife got it.

Q. When did she get it?

A. I think that same afternoon.

Q. Where did she get it?

A. She got it at the bank.

Q. Which bank?

A. The Lewiston National Bank.

Q. Do you know who gave it to her at the bank?

(Testimony of Guy L. Wilson.)

A. No, sir; I don't.

Q. Do you know who told her to go to the bank and get the note?

A. I think Mr. Dwyer told her the note was in the bank there.

Q. How long was that after you made the deed?

A. It was the same afternoon.

Q. The deed was made after two o'clock, was it?

A. Well, I don't know. It was some time right after dinner. I don't know just what time it was.

Q. Well, the reason I put my question that way was, I understood dinner in this locality was between 12 and 2? A. Yes, sir.

Q. And you went over to Clarkston to your dinner? A. No, sir; I ate dinner in town.

Q. Did you hear Mr. Dwyer tell your wife to go and get the note? [360—30]

A. No, I don't remember that I did.

Q. Where were you when she went to get the note?

A. I was at work.

Q. Why didn't you go and get your note?

A. Well, I don't know. I was busy, and as soon as the deed was signed and the thing straightened up I went right to my work.

Q. Did you go to work on the street or up to the office where you were employed?

A. I went to the office first, but I don't remember now where I worked.

Q. Let us get these localities now: Where was the note—in which bank?

A. The Lewiston National Bank.